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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1964

No. 763

CITY OF CORONADO and R. J. TOWNSEND, a taxpayer,

Appellants,

vs.

THE SAN DIEGO UNIFIED PORT DISTRICT; MILES BOWLER, B. F. COGGAN, JAMES GLASGOW, C. A. LARSEN, D. D. McELFRESH, LARRY RUEHLE and DOE I, as port commissioners acting as the Board of Commissioners of the San Diego Unified Port District; THE STATE OF CALIFORNIA, Defendant pursuant to Section 6308 of the Public Resources Code of the State of California; et al.,

Appellees.

On Appeal from the District Court of Appeal of the State of California, Fourth Appellate District

JURISDICTIONAL STATEMENT

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Appellants,

vs.

THE SAN DIEGO UNIFIED PORT DISTRICT; MILES BOWLER, B. F. COGGAN, JAMES GLASGOW, C. A. LARSEN, D. D. MCELFRESH, LARRY RUEHLE and DOE I, as port commissioners acting as the Board of Commissioners of the San Diego Unified Port District; THE STATE OF CALIFORNIA, Defendant pursuant to Section 6308 of the Public Resources Code of the State of California; et al.,

Appellees.

On Appeal from the District Court of Appeal of the State of California, Fourth Appellate District

JURISDICTIONAL STATEMENT

Appellants City of Coronado and R. J. Townsend appeal from the decision of the District Court of Ap-

peal, State of California, Fourth Appellate District, rendered on May 26, 1964, affirming the Judgment entered in the Superior Court of the State of California in and for the County of San Diego on February 19, 1963, and submit this Jurisdictional Statement to show that the Supreme Court of the United States has jurisdiction of the Appeal and that substantial questions are presented.

DECISION BELOW

The decision of the District Court of Appeal, State of California, Fourth Appellate District, is reported in 227 A.C.A. 493, 38 Cal. Rptr. 834 (1964) and is appended hereto as Appendix "A". This decision affirmed an unreported Judgment of the Superior Court of the State of California in and for the County of San Diego, dismissing appellants' complaint upon the ground that none of the causes of action therein states facts sufficient to constitute a cause of action.

JURISDICTION

These proceedings were commenced on December 28, 1962, when appellants filed a complaint seeking declaratory and injunctive relief with respect to the constitutionality of the San Diego Unified Port District Act (California Stat. 1962, First Ex. Sess., Ch. 67, as amended, California Stat. 1963, Reg. Sess., Ch.

673). In their fourth and fifth causes of action appellants averred that the statute is repugnant both to the equal protection clause and to the due process clause of the fourteenth amendment of the United States Constitution.

Appellees' demurrers to all causes of action were sustained in the Superior Court of the State of California in and for the County of San Diego on February 11, 1963. Judgment for appellees was entered accordingly on February 19, 1963.

The Judgment of the Superior Court was affirmed by the decision of the District Court of Appeal, State of California, Fourth Appellate District on May 26, 1964, and appellants' Petition For A Hearing by the Supreme Court of the State of California was denied on July 22, 1964.

Notice of Appeal to the Supreme Court of the United States was filed in the District Court of Appeal, State of California, Fourth Appellate District, on October 15, 1964. The jurisdiction of the Supreme Court to hear this appeal rests upon 28 U.S.C. §1257(2). Cases which sustain the Supreme Court's jurisdiction include:

Murray v. Curlett, 374 U.S. 203, 10 L. Ed. 2d 844, 83 S. Ct. 1560 (1963)

McGowan v. Maryland, 366 U.S. 420, 6 L. Ed. 2d 393, 81 S. Ct. 1101 (1961)

Michigan-Wisconsin Pipe Line Co. v. Calvert, 347 U.S. 157, 98 L. Ed. 583, 74 S. Ct. 396 (1954)

Hammerstein v. Superior Court, 341 U.S. 491, 95 L. Ed. 1135, 71 S. Ct. 820 (1951)
Bandini Petroleum Co. v. Superior Court, 284 U.S. 8, 76 L. Ed. 136, 52 S. Ct. 103 (1931)
American Railway Express Company v. Levee, 263 U.S. 19, 68 L. Ed. 140, 44 S. Ct. 11 (1923)

QUESTIONS PRESENTED

(a) When a California statute authorizes establishment of a unified harbor district pursuant to electoral procedures under which voters residing in one of the communities in the area designated for inclusion in the district are classified as citizens of their own municipality and empowered through such classification to keep their city independent of the district, does the equal protection clause of the fourteenth amendment require voters residing in another community in the area designated for inclusion to be similarly classified as citizens of their own municipality and equally endowed with the right to prevent the involuntary inclusion of their city in the district?

(b) When a California statute authorizes establishment of a unified harbor district pursuant to the above-described electoral procedures and requires the district to assume the existing debt obligations of one of the municipalities while obligating all of the taxpayers in the district to guarantee the assumed indebtedness, are taxpayers of another municipality deprived of their property without due process of law

as a result of the involuntary inclusion of their city in the district?

STATUTES INVOLVED

The San Diego Unified Port District Act (California Stat. 1962, First Ex. Sess., Ch. 67, as amended, California Stat. 1963, Reg. Sess., Ch. 673) is the sole statute involved and is set forth in Appendix "B" appended hereto.[1]

STATEMENT OF THE CASE

This controversy involves the constitutionality of certain provisions of a California statute which authorizes establishment of the San Diego Unified Port District in five municipalities in the San Diego Bay area. Appellant City of Coronado is one of these municipalities; the other appellant, R. J. Townsend, is a resident, property owner, taxpayer and voter in the City of Coronado.

Pursuant to the enabling provisions of Chapter 67, a proposal to establish the San Diego Unified Port District was voted upon by electors in the five municipalities on November 6, 1962. In accordance with the requirements of Sections 11, 12 and 13 of the statute the electorate was divided into "two parts":

[1]The San Diego Unified Port District Act is often referred to in this Jurisdictional Statement as "Chapter 67" in accordance with the practice adopted by the District Court of Appeal.

the first "part" consisted of San Diego voters; the second comprised the voters in the remaining four cities includible within the proposed district.[2] Under the statutory formula, the district could not be formed unless a majority of the voters in each "part" authorized establishment. In the balloting, voters in the City of Coronado overwhelmingly opposed the creation of the district and the inclusion of their community within its boundaries. However, under Chapter 67's unique voter-authorization procedures, the opposition of Coronado's electors was totally ineffectual; the district was declared duly established and the City of Coronado was perforce included within its contours.

Upon its establishment, Section 67 of Chapter 67 required the district to "take over and assume indebt-

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[2]Sec. 11. The count of the vote in the election shall be conducted in two parts. One part shall consist of those votes cast in the City of San Diego, and the other part shall consist of all of those votes cast in the other four cities specified in Section 5 and outside territory.

Sec. 12. If the electors in the City of San Diego and the electors in the other four cities specified in Section 5 and outside territory, approve of the formation of the district at an election held pursuant to the provisions of this act, the district shall be established.

Sec. 13. If from the canvass it appears and the board of supervisors finds that a majority of the votes cast in the City of San Diego and a majority of the votes cast in the other four cities and outside territory, the votes of such other four cities and outside territory being combined together, were cast in favor of the formation of the district, it shall enter that fact upon its minutes, together with a description of the boundaries of the district, its name, the official name or names by which the district is commonly known and enter its order declaring the district duly formed and existing in the county.

edness incurred for development of tide and submerged lands of the county or any city specified in this act which shall have heretofore issued bonds or created any indebtedness for harbor development or improvement in the bay of San Diego . . . ." Section 67 additionally specified that proceeds raised through property taxation might be used to retire the assumed indebtedness if the revenues from facilities constructed through the use of bond proceeds were inadequate. However, Chapter 67 contained no provision ensuring that property in each municipality included in the district would be assessable only for the preexisting indebtedness of that municipality.

In accordance with the mandatory provisions of Section 67, the district and the City of San Diego have consummated an Assumption Agreement pursuant to which the district has allegedly assumed over $15,000,000 of outstanding debt obligations originally incurred by the City of San Diego. The Assumption Agreement, reflecting the original provisions of Section 67, authorizes the use of tax revenues to amortize the assumed indebtedness if revenues produced by the facilities erected with bond proceeds are insufficient. In 1963, Section 67 of Chapter 67 was amended so as to expressly adopt and confirm this Assumption Agreement.

After unsuccessful attempts to enjoin the holding of the election on the district's formation and to enjoin the certification of the results of the balloting, appellants instituted these proceedings on December

28, 1962 in the Superior Court of the State of California in and for the City and County of San Francisco.

The complaint contains prayers for declaratory and injunctive relief on the basis of five causes of action, three of which are not embraced in this appeal since they involve questions of California law. In their fourth cause of action, appellants aver that Chapter 67's voting formula under which the district was formed violates the equal protection clause of the fourteenth amendment by arbitrarily and irrationally favoring San Diego's electors through its voter-classification scheme. In their fifth cause, appellants contend that they have been deprived of their property without the due process of law since Coronado's taxpayers have been forced to become unwilling guarantors of bonded indebtedness which had been authorized by San Diego's electors prior to formation of the district and then assumed by the district.

On motion of defendants, venue was transferred to the Superior Court of the State of California in and for the County of San Diego. After defendants interposed general demurrers to all causes of action, a hearing was held before the Honorable A. Curtis Smith, Judge of the Superior Court of Los Angeles County, assigned by the Judicial Council of the State of California pursuant to stipulation of counsel. On February 11, 1963, appellants' application for a preliminary injunction was denied and defendants' general demurrers were sustained upon the ground that

none of the causes of action stated facts entitling appellants to legal redress. Judgment dismissing the complaint was entered on February 19, 1963.

On April 1, 1963, the City of Coronado and R. J. Townsend appealed to the District Court of Appeal, State of California, Fourth Appellate District. That court affirmed the judgment below by a decision dated May 26, 1964. Appellants' Petition For A Hearing by the Supreme Court of the State of California was denied on July 22, 1964, following which this appeal was filed on October 15, 1964.

THE QUESTIONS ARE SUBSTANTIAL

This appeal raises significant questions concerning the constitutional limitations upon the power of a state to create a special governmental district. Although the existence of such districts outside the framework of conventional and existing governmental subdivisions is now commonplace, constitutional restrictions upon their creation and use remain ill-defined.

The facts before this court underscore the need for a clear delineation of the scope of a state's power to establish such districts. The San Diego Unified Port District was created through flagrantly unjust procedures; its establishment has caused financial hardship to residents and taxpayers in the City of Coronado. Nevertheless California's courts have denied appellants relief.

It is submitted that rights secured to appellants under the equal protection clause and due process clause of the fourteenth amendment have been infringed by appellants' forced inclusion in the district.

A. EQUAL PROTECTION CONTENTION

Under the provisions of Chapter 67, the district's establishment was contingent upon the approval of a majority of electors in both parts of a bifurcated electorate, one part consisting only of San Diego voters, and the other comprising the voters in the Cities of Chula Vista, Coronado, National City and Imperial Beach.

Through this statutory formula, voters in San Diego were classified as citizens of their own municipality and were empowered to cast their ballots as representatives and guardians of their unique interests as San Diego residents. If a majority of electors in San Diego opposed establishment, the district could not have been formed even though a majority of the entire electorate favored establishment.

On the other hand, the statute compelled residents of Coronado to vote as part of a heterogeneous, artificial electorate bearing no relationship to their interests and obligations as citizens of Coronado. If a majority of electors in Coronado opposed establishment, the district could nevertheless be formed.

The impact of Chapter 67's voting scheme is clear: Coronado voters were denied the right to remain independent of the unified port scheme whereas that precise privilege was extended to franchise holders in San Diego through their singular power to veto formation of the district.

By according San Diego's voters this unique electoral privilege, Chapter 67 arbitrarily engendered in the San Diego electorate the right to protect undefined, but seemingly superior, municipal interests. Only voters in San Diego were given an opportunity to shelter their municipal interests from the wishes of other electors, if they so desired. Yet, the legitimate concerns of the Coronado voter in his community's tax structure and administration of municipal and harbor facilities are as worthy of respect and individual protection as the similar interests of the San Diego voter.

The District Court of Appeal does not deny that voters in Coronado were arbitrarily shunted into a specially contrived electorate and that San Diego's voters were accorded contrasting and more favorable electoral treatment. Rather, embracing a contention advanced by appellees, that court argues that Chapter 67 accords to the votes of Coronado's electors over five times the "weight" accorded to ballots cast by voters in San Diego, since there are over five times the number of voters in San Diego than in the four-city segment of the bifurcated electorate of which Coronado was a part. Hence, the court concludes

Chapter 67's voting scheme was neither unfair nor discriminatory.

In so holding, the District Court of Appeal purports to rely upon recent reapportionment decisions in this Court, announcing the "one man, one vote" formula. However, Chapter 67's voting mechanism cannot be sustained on the authority of these cases.

The reapportionment decisions require that voters be treated equally with respect to all attributes bearing upon the exercise of their franchise. That equality is not achieved under Chapter 67. The legislature has singled out electors in San Diego for favored electoral treatment solely on the basis of the fact that those voters reside in San Diego. Only San Diego's voters were classified as municipal electors and thereby empowered to keep their city outside the district. That classification was not extended to residents of the smaller cities such as Coronado. Whatever the relative "weight" of the votes cast in Coronado and San Diego, electors in San Diego could never be compelled to be unwilling parties to the unified harbor scheme; electors in Coronado could—and were. Consequently, in the context of Chapter 67's electoral machinery, any disparity in weight supposedly favoring a Coronado ballot is wholly illusory.

As an additional attribute, San Diego's electors were offered the opportunity to foist their municipal debts upon the objecting citizens of the smaller communities. Under the classification scheme in Chapter 67, Coronado's voters were denied the opportunity of

avoiding that injustice. This aspect of the electoral scheme is more fully discussed hereafter in connection with appellants' due process contentions.

Manifestly, Chapter 67's electoral scheme utilizes geography as a means for discriminating between different classes of voters. This is condemned by the equal protection clause. "[T]here is no indication in the Constitution that homesite or occupation affords a permissible basis for distinguishing between qualified voters within the State." *Gray v. Sanders,* 327 U.S. 367, 9 L. Ed. 2d 821, 830, 83 S. Ct. 801 (1963).

Notwithstanding the decision of the District Court of Appeal, it is established that the creation of a preferred class of voters on the basis of homesite is unconstitutional, irrespective of the "weight" attaching to each ballot. *Dorsey v. Fortson,* 228 F. Supp. 259 (N.D. Ga. 1964) *prob. juris. noted* 33 U.S. L. WEEK 3115 (U.S. Oct. 13, 1964).[3]

In *Dorsey,* a three-judge federal district court was confronted with a voting scheme involving a legislative classification under which voters were treated differently solely because they lived in different governmental subdivisions. Under the Georgia plan, voters in one class of electoral districts, drawn to be coextensive with county boundaries, were able to select their own senators. However, in the other class, where districts were smaller than county size, voters were compelled to join with electors situated in other dis-

[3]The *Dorsey* opinion was published after the decision of the District Court of Appeal was rendered in the present case.

tricts in the same county in selecting a mutual slate of senators. In the latter class, it was possible for voters in one district to nullify the choice of voters residing elsewhere in the county. As in the case at bar, the Georgia scheme diluted and debased the franchise, not because of any disparity in the "weight" of the votes cast, but because it favored certain groups of voters over others solely because they resided in different areas. Condemning the scheme as illegal under the equal protection clause of the fourteenth amendment, the court said:

> "Here the dilution or debasement is of the right of some to choose their representative. It is discrimination in another form, but we think it necessarily follows that voters in some senatorial districts cannot be treated differently from voters in other senatorial districts. The statute here is nothing more than a classification of voters in senatorial districts on the basis of homesite, to the end that some are allowed to select their representatives while others are not. It is an invidious discrimination tested by any standard." (228 F. Supp. at 263.)

Like the statute in *Dorsey,* Chapter 67 creates a preferred class of voter solely on the basis of homesite. The failure of the District Court of Appeal to invalidate its voting scheme necessitates review by this Court.

B. DUE PROCESS CONTENTION

The opinion of the District Court of Appeal is the first decision in the United States holding that the preexisting debts of a solvent municipality may constitutionally be foisted upon the objecting citizens of another city through the establishment of a special governmental district.

Under Chapter 67, the election on the district's establishment offered San Diego's electors an attractive opportunity to ease their own burdens by shifting a portion of the outstanding municipal debts of San Diego to Coronado's property owners through the medium of the district. The overwhelming opposition of Coronado's voters was ineffectual as a means of preventing that injustice. Appellants submit that this bond assumption scheme cannot be reconciled with the fundamental precepts of fairness imbedded in the due process clause of the fourteenth amendment.

In support of its decision, the District Court of Appeal relies almost exclusively upon an unrestrained passage of dictum in *Hunter v. Pittsburg*, 207 U.S. 161, 52 L. Ed. 151, 28 S. Ct. 40 (1907).[4] However, since the facts in *Hunter* differ significantly from those at issue here, such reliance is ill-founded.

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[4]The pre-*Hunter* decisions mentioned by the District Court of Appeal at 227 A.C.A. 519, 38 Cal. Rptr. 849, Appendix "A" 33, are inapposite since they almost uniformly concern interests not involved in the present controversy, *i.e.*, the rights of holders of public corporation bonds. These decisions will be discussed fully in appellants' briefs if this Court grants review.

Unlike the instant controversy, *Hunter* concerned only anticipated, future indebtedness. The plaintiffs in *Hunter* sought judicial relief after having unsuccessfully opposed the consolidation of their municipality with the City of Pittsburg. They alleged that the consolidated municipality planned to expand and improve municipal facilities at an unspecified future date; the expenditures necessitated by the projected improvement program, it was averred, would lead to an increase in municipal indebtedness, thereby resulting in an unconstitutional taking of their property through higher taxes. Unlike Chapter 67, the statute under attack in *Hunter* expressly provided that property in each of the consolidating cities would remain independently assessable for the preexisting indebtedness of each constituent municipality. See 207 U.S. at 163. The Pennsylvania statute thus offered the complaining parties in *Hunter* full protection against their being forced to assume preexisting debt obligations of another city. Thus confronted with a due process claim based solely on anticipated indebtedness, the Supreme Court had little difficulty in denying relief to the *Hunter* plaintiffs.[5]

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[5]It may be noted that this Court decided the *Hunter* controversy on its merits, thereby foreclosing the contention that the constitutional issues before it were not "ripe" for adjudication. *A fortiori*, the case at bar is not premature, despite the District Court of Appeal's comments to the contrary. In any event, Coronado's property owners are now involuntary sureties for San Diego's debentures; since unencumbered property is more valuable than property subject to the obligations created by Chapter 67, the impact of the district's assumption of San Diego's pre-existing debts constitutes a present deprivation of property so far as Coronado's property owners are concerned.

The result in *Hunter* may easily be explained. Although the *Hunter* plaintiffs objected to their inclusion in the consolidated city, they were entitled to participate in administering the affairs of the new municipality, including the authorization of the future improvement programs requiring the issuance of municipal bonds. With preexisting indebtedness fairly apportioned, the *Hunter* statute met the standards of fairness required by the due process clause.

Had the election under Chapter 67 concerned only the question of establishing a district with power to incur future indebtedness, San Diego's electors would have voted with the knowledge that ballots favoring unification would constitute authorization for the imposition of new obligations—obligations which they would be required to bear to the same extent as property owners in Coronado. In such circumstances, *Hunter* would clearly govern. But instead, San Diego's voters, comprising eighty-four percent of the Bay Area electorate, went to the polls with an opportunity to impose their own debt burdens upon objecting voters in municipalities such as Coronado. In this situation, *Hunter* cannot immunize Chapter 67 from invalidation under the due process clause.

By relying upon *Hunter*, the District Court of Appeal has apparently embraced the theory that a state has absolute discretion in dealing with its citizens and their property, however unfair the procedures employed, so long as a device such as a specially created governmental district is utilized. Such a theory is surely erroneous and must be repudiated by this

Court. *Cf. Gomillion v. Lightfoot,* 364 U.S. 339, 342-44, 5 L. Ed. 2d 110, 113-15, 81 S. Ct. 125 (1960); *Baker v. Carr,* 369 U.S. 186, 229, 7 L. Ed. 2d 663, 693, 82 S. Ct. 691 (1962).

CONCLUSION

Since the decision of the District Court of Appeal fails to recognize that Chapter 67 transgresses the limitations established by the fourteenth amendment, appellants submit that it must be reviewed and reversed by this Court. The questions presented by this appeal are substantial and are of such public importance as to require plenary consideration on the merits, with briefs and oral argument, for their resolution.

Dated, December 14, 1964.

Respectfully submitted,

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(Appendices Follow)

Appendix "A"

In the District Court of Appeal
State of California
Fourth Appellate District

4 Civil No. 7416

City of Coronado, et al.,
Plaintiffs and Appellants,
vs.
The San Diego Unified Port District, et al.,
Defendants and Respondents.

Opinion

This is a companion case with 4 Civil No. 7415. The appeal is from a judgment of dismissal entered after general demurrers had been sustained without leave to amend to all five counts of plaintiffs' complaint.

As did Action 4 Civil No. 7415, this action concerns proceedings taken to form the San Diego Unified Port District in which appellant, City of Coronado, was sought to be included and regarding which proceedings were instituted under the provisions of the San Diego Unified Port District Act (Stats. 1962, 1st Ex. Sess., Ch. 67; as amended, Stats. 1962, Reg. Sess., Ch. 673).

The present action was commenced in the Superior Court of the City and County of San Francisco on December 28, 1962. The complaint filed in San Francisco was in five counts. The first two are based upon alleged technical infirmities in the procedures leading to the formation of the District. The third challenges the validity, as applied to the tidelands administered in trust by the City of Coronado, of Sections 14 and 68 of the Act, Section 14 of which required a conveyance of those tidelands to the District upon its establishment. The fourth and fifth causes of action charge that the voting procedures established by the Act, insofar as they relate to Coronado and its taxpayers, are invalid under the equal protection and due process clauses of the United States Constitution for the reason that the voters of Coronado, considered as a unit, were not given a veto power over the formation of the District. Appellants pray for (1) an injunction restraining the District and its commissioners from performing any acts or exercising any powers granted to them under the Act excepting only the defense of this action; (2) for a determination of the rights and duties of the City of Coronado under the statutory grant in trust, and a determination of the legality of the procedures employed in establishing the District; (3) that the court declare the tidelands grant in trust to the City of Coronado remains binding and that the State is without power to revoke said trust; and (4) for a declaration that the voting procedures established under the Act are, insofar as they relate to plaintiffs, unconstitutional and that they

deny appellants equal protection of the laws and due process.

The defendants moved for change of venue to San Diego County and demurred generally and specially. On January 30, 1963, the San Francisco Superior Court determined that the only court having jurisdiction of the action was the San Diego County Superior Court, and transferred the action to that court.

On February 11, 1963, the court sustained defendants' general demurrers to all five causes of action. Plaintiffs declined an opportunity to amend, and the demurrers were therefore sustained without leave to amend. On February 19, 1963, a formal written judgment was entered dismissing the action.

The San Diego Bay Area is divided into a number of separate cities, viz.: San Diego, Chula Vista, Coronado, National City and Imperial Beach. Each of these cities borders upon the Pacific Ocean or San Diego Bay. Prior to 1962, all but Imperial Beach were acting as trustees of State tidelands within or adjacent to their borders which had been granted to them in trust by the State of California.

Thus, prior to 1962, any program for the common development of the bay area port and harbor facilities and adjacent tidelands would have been impossible without the coordinated action of each of the separate municipalities. The California Legislature enacted the San Diego Unified Port District Act in order to solve this problem. In Section 2 of the Act the Legislature made this declaration and determination:

"Sec. 2. It is hereby declared to be the policy of the State of California to develop the harbors and ports of this State for multiple purpose use for the benefit of the people. A necessity exists within San Diego County for such development. Because of the several separate cities and unincorporated populated areas in the area hereinafter described, only a specially created district can operate effectively in developing the harbors and port facilities. Because of the unique problems presented by this area, and the facts and circumstances relative to the development of harbor and port facilities, the adoption of a special act and the creation of a special district is required."

Accordingly the Act provided for the establishment of:

"A port district . . . for the development, operation, maintenance, control, regulation and management of the Harbor of San Diego upon the tidelands and lands lying under the inland navigable waters of San Diego Bay, and for the promotion of commerce, navigation, fisheries and recreation thereon. . . ." (Section 4)

The municipalities to be included within the District were San Diego, Chula Vista, Coronado, National City and Imperial Beach (Section 5). Upon its formation the District was to become the successor in interest of each of the constituent cities in its capacity as trustee of tidelands (Section 68) and each city had the duty, upon the establishment of the District, to convey to the District all of its interest in the tidelands previously held by it in trust. (Section 14).

Certain exceptions, not material for present purposes, were made with respect to the tidelands to be conveyed. Ch. 67, Section 14.

The San Diego Unified Port District was to be established upon the affirmative vote of the electors within the territories comprising the District (Sections 10-13). The matter was to be placed upon the ballot upon the filing with the Board of Supervisors of San Diego County of petitions or resolutions from each of the constituent cities (Section 6). Petitions or resolutions from each of the cities were filed with the Board on or about July 30, 1962.

On September 21, 1962, plaintiff City of Coronado and others, in an effort to prevent the election, filed an action which we shall refer to as Action No. 7415, in the San Diego County Superior Court. Named as defendants were the Registrar of Voters of San Diego County, the Supervisors of that County and the State of California, the State being joined pursuant to Public Resources Code, Section 6308. The complaint prayed for an injunction restraining the defendants from placing the measure calling for the formation of the District upon the November 6, 1962, ballot and from taking any further steps toward the establishment of the District. A preliminary injunction was denied, and the election proceeded according to schedule. The voting resulted in approval of the formation of the District.

As provided in Section 11 of the Act, the vote relating to the formation of the District was taken in "two

parts", the City of San Diego constituting the first part and the cities of Chula Vista, Coronado, National City and Imperial Beach collectively constituting the second part. The District could not be established without the affirmative vote of both parts and thus each part possessed a veto power.

After the outcome of the election had been determined, appellants, City of Coronado and R. J. Townsend, filed a First Amended Complaint in Action No. 7415 on November 13, 1962, in which they sought to enjoin the formal establishment of the District. The First Amended Complaint and the other proceedings in Action No. 7415 are also before this Court. The facts alleged and the charges made in the First Amended Complaint in Action No. 7415 are virtually identical with the facts alleged and the charges made in the present complaint.

All defendants demurred to the amended complaint in Action No. 7415. On November 29, 1962, the general demurrers of all defendants were sustained to the first two causes of action and the general demurrers of all defendants, other than the State of California, were sustained to the remaining causes of action. A preliminary injunction restraining the formation of the District was dissolved on December 13, and on December 18 the District was formally established.

Appellants elected not to amend the complaint in Action No. 7415 and on December 20, 1962, and January 3, 1963, respectively, judgments of dismissal

were entered in favor of the Registrar of Voters and Supervisors of San Diego County and the State of California. On appeal and motion by respondents to dismiss, these judgments have now been set aside and the amended complaint ordered dismissed. This procedure was suggested by appellants to be followed in the event this court determined that all issues in that action had become moot and decided to grant respondents' motion to dismiss the appeal.

In the first count of their complaint in the present action appellants attack the validity of the formation of the District. Their claim is that the Coronado petition calling for the election to approve the District's establishment although signed by the requisite number of registered voters was not signed by voters of the class required under provisions of the Act. The particular provision in question on this point, Section 6(a), reads as follows:

> "(a) A petition calling for the formation of the district is filed with the board of supervisors from each of the five cities specified in Section 5. *Each of the petitions from the five respective cities shall be signed by at least five per cent (5%) of the voters registered for the last municipal election in each particular city.*"

Appellants maintain that the words "five per cent (5%) of the voters registered for the last municipal election" means five per cent of the specific individuals registered for the last municipal election, and is not subject to the interpretation "five per cent (5%) of the *number of* voters so registered."

As to this count respondents take the position that *Quo Warranto* is appellants' only available procedure for attack, that regardless of the validity or invalidity of the petition the board of supervisors after an opinion by the legislative council and after due consideration determined that the petition was valid, certified the results of the voting for the District's establishment and entered its order declaring the District duly formed and existing and that the officers of the District had entered upon immediate performance of their duties. Respondents claim that these acts brought into being a *de facto* if not a *de jure* corporate entity and that appellants impliedly admitted it was either one or the other by bringing suit against it, for suit cannot be legally brought or maintained against a non-existent party. (*O. & V. R.R. Co. v. Plumas Co.*, 37 Cal. 354; *Martin v. Deetz*, 102 Cal. 55.) Accordingly, say respondents, even under a strict interpretation, limiting application of the *Quo Warranto* rule, appellants have no right to challenge the validity of the formation of the District in an action such as this and that the demurrers were properly sustained.

Appellants maintain that even though *Quo Warranto* be available it would, as to appellants, be inadequate as a remedy. They point to the requirements of Section 6308 of the Public Resources Code making the State of California a necessary party to any action or proceeding brought against any political subdivision or agency of the state involving the title to or

boundaries of tidelands or submerged lands. They point out that in this action, as in Action No. 7415, the State of California was, therefore, of legal necessity named a party and in both actions represented by the Attorney General whose discretionary leave must be had before commencing any action in *Quo Warranto*. They further point out that the Attorney General opposed appellants' claims in Action No. 7415 and entered demurrers in that action prior to the time that *Quo Warranto* posed a possible procedural obstacle. They further contend that because the State through the Attorney General is an adverse party here, the Attorney General cannot be required to assume the objective role of "Representative of the Public Interest", while at the same time adopting the mantle of an adversary in the present controversy. They say were this so the State, through the Attorney General, would be judge of its own cause.

As above stated this appeal is from a judgment entered when demurrers to appellants' five causes of action were sustained without leave to amend. This means that the trial court found that none of the five counts appearing in the complaint could be amended to state a cause of action. Obviously this action could not by any legal means, be transformed into an action of *Quo Warranto*. So even though *Quo Warranto* be the only available remedy to test the formation or legal existence of the District this would still not mean that the complaint herein could be amended, so as to thereby institute pursuit of that remedy.

The judgment as to the first cause of action must, therefore, be sustained insofar as it is in anywise affected by recourse to *Quo Warranto*.

As to the first count appellants also claim, and are not disputed, that although the required percentage of the number of voters registered at the last municipal election signed the petition some 53 of the voters who did sign had not themselves been registered at the last municipal election. They contend, therefore, that the petition was not a valid petition under requirements of the Act; that this fact was demonstrated to the board of supervisors by representatives of the City of Coronado, but the board disregarded the infirmity and continued the formation process.

Two sections of Chapter 67 pertain to the qualification of voters entitled to sign a petition calling for formation of the District. Section 6(a) quoted above is one. The other is Section 8 which provides:

> "Each signer of a petition within a particular city shall be a registered voter and resident of that city."

From a reading of these two sections together it seems plain that Section 6(a), is concerned primarily with the number of signatures, while the primary concern of the Legislature in including Section 8 within the Act was to lay down the *qualifications* of the signators. Were this not true and if Section 6(a) be held to embrace and dictate both the number and qualifications of the signators then Section 8 would appear to be completely redundant, lending no addi-

tional substance whatever to the Act. The axiomatic rule of construction is that no language used by the legislative body can be assumed to have been incorporated without meaning or purpose. A statute will be construed to give effect to all of its provisions. (*In re Goddard* (1937), 24 Cal. App. 2d 132.)

Appellants have pointed out no other California statute, decision or situation in which the specific individual petition signers were required to be registered both at the time of signing and at some prior election. There are other California statutes which provide that petition signers must be registered at the time of signing and that the number of signers is to be equal to a percentage of the number of voters registered or having voted at some prior election. See for instance Streets and Highways Code, Section 27043; Health and Safety Code, Sections 32003, 32004 and Public Resources Code, Section 5781.3(b). We have not been shown any cogent reason why the Legislature in this particular instance should have changed the commonly prescribed requirement and substituted the one contended for by appellants. Statutes should be construed so as to harmonize with "the system of which they are a part." (*Welch v. Williams*, 95 Cal. 365, 369 [31 P. 222].)

Appellants suggest as a reason for such an innovation that the Legislature wanted the voters of longer residence, registration and acquaintance with the affairs of the area to be the ones to pass upon the wisdom of forming the District. Appellants have not, however, pointed to any evidence or legislative prece-

dent to support such a theory of motivation on the part of the Legislature nor any precedent excepting *Wheeler v. Herbert* (1907), 152 Cal. 224 [92 P. 353], upon which this court could base such a conclusion. Many situations and cases have arisen since *Wheeler v. Herbert, supra,* was decided in 1907 but appellants have pointed to no more recent incident where the rule announced there has been again applied and upheld. This is, of course, no legal basis for denying legality to the scheme of determination of electors' qualifications sanctioned in that case, but we are not convinced that this ancient rule harmonizes today with our system of election statutes and practices common to this more modern age of accelerated annexations, incorporations, district formations and mobile electors.

The justification for requiring voters to be registered is to prevent fraud and not necessarily to bear witness to loyalty or particular concern with the local affairs of any given area. (*Welch v. Williams, supra* (1892); 96 Cal. 365 [31 P. 222].) Registration rules should be construed to permit the greatest number of qualified voters to exercise their rights. (*Ley v. Dominguez* (1933), 212 Cal. 587 [299 P. 713].) It is the policy of the law that an election will not be declared a nullity if upon any reasonable basis such a result can be avoided. (*Davis v. County of Los Angeles* (1938), 12 Cal. 2d 412, 427 [84 P. 2d 1034].) "The courts are reluctant to defeat a fair expression of popular will in an election and will not do so unless so required by the plain mandate of the law." (*Veter-*

ans' Finance Com. v. Betts (1961), 55 Cal. 2d 397, 401 [359 P. 2d 471].)

Applying the law as it thus appears to the allegations in appellants' first count we find that the trial court did not err in sustaining respondents' demurrer to the first count of the complaint without leave to amend.

Turning now to the second count we find nothing in Chapter 67 which, viewed according to the principles discussed above, would provide a basis for any possible judgment in appellants' favor nor in view of the facts as stated do we see any manner in which the allegations could be amended to state a cause of action. No provision in the Act imposes any mandatory duty upon the supervisors to hold a hearing or hearings prior to the election to determine whether there exists unincorporated territory which would be benefited by inclusion within the area embraced by the District. Under Section 15 of the Act the discretion given to the board of supervisors is permissive. The Act contains no mandate that such discretion must be exercised prior to formation of the District. The language used in Section 15 is:

> "The Board of Supervisors of the County of San Diego *may* by ordinance, include within the district unincorporated territory which the board has determined would be benefited by the district." (Emphasis added.)

Even though the board had held hearings as appellants insist should have been done, the statute imposes

no obligation upon the board to act one way or the other as a result of the hearings.

The demurrers to count two were properly overruled without leave to amend.

The gravamen of the third cause of action is that the State of California is without power to revoke the grant in trust of certain tide and submerged lands to the City of Coronado by means of implementation of Chapter 67.

In 1923 the State of California conveyed to the City of Coronado its right, title and interest in certain tide and submerged lands situated within the city's boundaries "to be forever held by said City of Coronado in trust" for purposes of navigation, commerce and fisheries. (Stats. 1923, Ch. 49.) By terms of the grant the land was, among other purposes, to be utilized:

> "For the establishment, improvement and conduct of the harbor and for the construction, maintenance and operation thereon of wharves, docks, piers, slips, quays, and other utilities. . . . necessary or convenient for the promotion of commerce and navigation and fisheries and for the establishment and maintenance of bath houses and bathing facilities necessary or convenient for the inhabitants of said city. . . ."

In 1957 an amendment to the original grant expanded the uses to which the land might be employed to include "construction, maintenance and operation of public buildings, public works and playgrounds, and for public recreational purposes. . . ."

This legislative act of amending the statute instituting the original grant and trust was apparently not questioned by appellant, City of Coronado, and was at least some indication that the legislative intent in making the grant to Coronado was not [sic] divest the state of control over either the lands conveyed or the purposes of the trust that gives rise to the present question of retention of sovereign control. The Legislature, through enactment of Chapter 67, has purported to superimpose upon the above-described grant a new trust in favor of the San Diego Unified Port District. The operative section of the statute bearing upon the questioned right of the State to transfer Coronado tidelands to the District provides:

> "Sec. 14. Upon the establishment of the district, every city specified in Section 5 shall convey to the district all its right, title and interest in and to the tidelands and submerged lands, together with any facilities thereon, which are owned by the city, including any such lands which have been granted in trust to the city by the State in the Bay of San Diego. . . . Thereafter the title to such lands shall reside in district, and the district shall hold such lands in trust for the uses and purposes and upon the conditions which are declared in this act. . . ."

Appellants contend that in passing this part of the Act the Legislature exceeded its power and that it was without legal authority to revoke the Coronado trust or to provide for transfer to the District of the subject tidelands and superimpose a new trust upon the old, substituting the District for Coronado, as

trustee. Appellants point to the case of *Atwood v. Hammond* (1935) 4 Cal. 2d 31 [48 P. 2d 20], as the paramount declaration of law and policy on this subject by the Supreme Court of California, and maintain that under the rule there announced their third count states a cause of action.

Respondents reply that *Atwood v. Hammond, supra,* has to do with tidelands drained and reclaimed as a consequence of harbor development and because this land was no longer required for the purposes of public trust the Legislature had power to free the reclaimed land from the trust. They say further that the language relied upon by appellants is dictum, that apart from this dictum the case stands for the power of the Legislature to revoke a public trust and that the dictum relied upon by appellants was repudiated in *Mallon v. City of Long Beach* (1955), 44 Cal. 2d 199, 208-210 [282 P. 481]. The language referred to by respondents in the *Long Beach* case is as follows:

> "Defendants also contend that the dictum in *Atwood v. Hammond,* 4 Cal. 2d 31, 44 [48 P. 2d 20], that 'the state could not by unilateral action divest the city of its title, nor annex a different use to this eighteen acre parcel [of reclaimed tidelands],' established the rule that although the state can terminate the public trust over such lands, the termination of the trust results, not in a reversion to the state as grantor, but in the ownership by the city of an absolute title to the lands originally conveyed to it in trust. This contention is based on the assumption that, pursuant to a conveyance to it from the state of lands subject to a public trust, the city acquires property

> or contractual rights that are beyond the power of the Legislature to alter. Even if a conveyance, such as the one to the city of Long Beach in the present case, from the state to a municipal corporation is considered as a contract between the city and the state or as creating property interests in the city, the state acting through the Legislature has the power to alter contractual or property rights acquired by the municipal corporation from the state for governmental purposes. . . . It is clear in the present case that any interest of the city of Long Beach in the tidelands was acquired not as a 'municipal affair,' but subject to a public trust to develop its harbor and navigation facilities for the benefit of the entire state, and was therefore subject to the control of the Legislature.
>
> "Moroever, the construction of the 1951 statute for which defendants contend would result in its unconstitutionality. If the statutory revocation operates as a transfer of the monies affected thereby to the city of Long Beach, such a transfer would be a gift of public monies in violation of section 31 of article IV of the Constitution."

Appellants admit, in view of the holding in *Mallon v. City of Long Beach, supra,* and the provisions of Artice IV, Section 31 of the California Constitution, that neither Coronado nor its inhabitants may claim any *proprietary* interest in the tidelands. They nevertheless argue that Coronado and its citizens are "favored beneficiaries in administration of the tideland trust" and that this status restricts the power of the Legislature to deal with the tidelands. They

urge that Coronado has relied to its detriment upon the terms of the statutory grant and argue that the State should therefore be estopped to revoke it; that pursuant to the trust Coronado has justifiably and inextricably committed itself to management of the harbor facilities which its taxpayers paid to improve, all in reliance upon deeds from the State of California which recited that title and interest in tidelands within its boundaries were "to be forever held by said City of Coronado in trust . . ."

Other points urged by appellants are that private trust doctrines support the irrevocability of the Coronado grant (referring to Civil Code, section 2280 and amendment) and that the trust is irrevocable so long as the trust purposes for which the grant was made remain unfulfilled.

In passing upon the question of the power of the Legislature to change the trust by implementation of Chapter 67 we can be but little concerned with the equitable considerations urged by appellants. The Legislature either had constitutional authority to bring about this change or it did not. If constitutional authority to effect this change reposed in the Legislature all of the equitable considerations urged by appellants would not neutralize this authority and permit the courts of this state to hold the statute void, ineffective or unenforceable on equitable grounds. "All presumptions and intendments favor the validity of the statute and mere doubt does not afford sufficient reason for judicial declaration of invalidity. Statutes must be upheld unless their unconstitutionality clearly, posi-

tively and unmistakably appears." (*Lockheed Aircraft Corp. v. Superior Court* (1946), 28 Cal. 2d 481, 484 [171 P. 2d 21]; *State of California v. Ind. Acc. Com.*, 48 Cal. 2d 365, 371.) "The existence of facts supporting the legislative judgment is to be presumed and the burden of overcoming the presumption of constitutionality is cast upon the assailant." (*Dribin v. Superior Court*, 37 Cal. 2d 345, 352 [231 P. 2d 809].) "In passing upon the constitutionality of any law this court is bound by rigid rules. It is the duty of this court to give force and effect to the questioned statute unless it appears clearly unconstitutional." (*Denny v. Watson*, 114 Cal. App. 2d 491, 495 [250 P. 2d 692].) "The power of the judiciary to declare a statute unconstitutional should never be asserted unless the conflict between the statute and the organic law is palpable and incapable of reconciliation." (11 Cal. Jur. 2d 381.)

Pursuant to the power of eminent domain the sovereign or its subdivisions or agencies do and of necessity must have the power to take private property for public purposes. Logically then there is no cogent reason why, in order to enhance the public welfare, the state should not be entitled or legally able to alter or extinguish the interest of a political or corporate subdivision in any grant made by the state to it, not in fee simple but in trust for the benefit of the public in general. It cannot be reasonably argued that such grants as that made to Coronado of the tide and submerged lands in question was made primarily for the benefit of the Coronado residents.

Appellants say that several statutes and judicial decisions have "adverted to local needs" by authorizing uses of tidelands and tidelands' revenues which are beneficial to local municipalities and that these matters constitute an "implicit . . . acknowledgment" of the favored position of those municipalities. This argument fails to take into consideration the fact that Article IV, Section 31 of the California Constitution which forbids the making of a gift of any public money or thing of value, prohibits in such a grant as that of the tidelands to Coronado the creation of any ownership in fee type of interest in the municipality. It also overlooks the fact that the public trust upon which the lands are necessarily held has as its beneficiaries, not the inhabitants of Coronado alone, but the public in general including all of the people of the State of California. (*Mallon v. Long Beach, supra,* 44 Cal. 2d 199 at 205.) The cases upon which appellants rely stand merely for the proposition that a tidelands' expenditure which advances navigation, commerce or fisheries will not be struck down by the court simply because it also results in a benefit to the municipality and its citizens. (*People v. City of Long Beach,* 51 Cal. 2d 875, 880-81 [338 P. 2d 177].)

In support of their contention that the grant in trust to Coronado was irrevocable appellants also place emphasis on the language in the grant providing that the tidelands should be "forever held" by Coronado in trust, and suggest that this language, of its own force, precludes a revocation of the grant. But virtually identical language was used in the 1911

conveyance of tidelands to Long Beach (see *City of Long Beach v. Morse*, 31 Cal. 2d 254, 256 [188 P. 2d 17] (1947).), and the Supreme Court nevertheless held in *Mallon v. City of Long Beach, supra*, that that grant was subject to revocation at the will of the Legislature.

In seeking to draw an analogy to the rules of private trust law, appellants also contend that a grant such as the present one, made prior to the 1931 amendment of Civil Code, section 2280, is irrevocable unless an express power of revocation has been reserved. But private trust law is not applicable in determining the power of the Legislature to revoke a statutory grant in trust to a corporate or political subdivision. It is true that private trust law is frequently cited by analogy in connection with certain problems arising under such circumstances as in the tidelands' trusts. See, for example, *City of Long Beach v. Morse, supra*, 31 Cal. 2d 254 [188 P. 2d 17] (1947), which declares, upon the basis of private trust law, that a municipality which is the trustee of a tidelands' trust may not appropriate the income from that trust for its own municipal purposes. But private trust principles cannot be called upon to nullify an act of the Legislature or modify its duty, under the California Constitution (Art. XV, Section 2), to do all things necessary to the execution and the administration of the public trust. See *Forestier v. Johnson*, 164 Cal. 24, 34, [127 P. 156] (1912). Neither can private trust principles be called upon to limit Article IV, Section 31 of the California Constitution which

forbids the creation of any proprietary interest in a municipality in connection with a conveyance of the tidelands. At any rate, the question was settled in *Mallon v. City of Long Beach, supra,* wherein it was held that the 1911 grant in trust to Long Beach, which contained no reservation of a right to revoke, could nevertheless be revoked at the will of the Legislature.

Viewing the subject from a slightly different aspect no grant of lands covered by navigable waters can be made which will impair the power of a subsequent Legislature to regulate enjoyment of the public right. (*Mallon v. City of Long Beach, supra; People v. California Fish Co.* (1913) 166 Cal. 576.) Upon grant to a municipality, subject to a public trust, and accompanied by a delegation of the right to improve the harbor and exercise control over harbor facilities, the lands are not placed entirely beyond the supervision of the State, but it may, and indeed has a duty to continue to protect the public interests. (*Illinois Central R.R. Co. v. Illinois,* 146 U.S. 387, 452-453.) In the *Illinois* case appears this language:

> " 'The State can no more abdicate its trust over property in which the whole people are interested, like navigable waters and soils under them, so as to leave them entirely under the use and control of private parties, except in the instance of parcels mentioned for the improvement of the navigation and use of the waters, or when parcels can be disposed of without impairment of the public interest in what remains, than it can abdicate its police powers in the administration of government and the preservation of the peace. *In the*

administration of government the use of such powers may for a limited period be delegated to a municipality or other body, but there always remains with the State the right to revoke those powers and exercise them in a more direct manner, and one more conformable to its wishes. So with trusts connected with public property, or property of a special character, like lands under navigable waters, they cannot be placed entirely beyond the direction and control of the State.' (Emphasis ours.)"

To hold that the State of California through its Legislature is without power to change from a small municipal trustee to a port district comprised of five municipalities would be to place San Diego harbor beyond the direction and control of the State for the benefit of the general public. Moreover, the State is not only the Trustor of the statutory grant of the tidelands to Coronado, possessing as such the power to alter, amend, modify or revoke that trust so that the tidelands subject to the trust may be administered in a manner most suitable to the needs of the people of this State; the State is also the representative of all of the people, and all of the people are the beneficiaries of the basic trust. Therefore, when the State acts in any way to alter or amend a statutory grant in trust made by it, it acts both as trustor and in behalf of the beneficiaries of the trust. This dual capacity has been described in *People Ex Rel. State Lands Com. v. City of Long Beach,* 200 Cal. App. 2d 609, 615 (1962) as the State being the "settlor-bene-

ficiary" in creating these statutory trusts. It is of course one of the familiar private trust law principles, also similarly applicable to a public trust, that the trustor and the beneficiaries, acting in concert, may alter, amend, or revoke the trust in any manner which is not contrary to law or public policy.

The demurrer to appellants' third cause of action was properly sustained without leave to amend.

In their fourth cause of action appellants take the position that by classifying Coronado and San Diego voters differently, Chapter 67 denied appellants equal protection of the law. They say that inasmuch as San Diego voters are classified as municipal residents that Coronado voters are likewise entitled to be so classified and that the justiciability of this controversy is rendered incontestable by the case of *Baker v. Carr* (1962) 369 U.S. 186; 7 L. Ed. 2d 663 and its progeny. Appellants say that if San Diego residents had opposed the District's formation by a narrow margin, while voters in the other four constituent cities had decisively approved its creation the San Diego vote would have defeated the proposal even though a majority of the other Bay Area residents favored the District. On the other hand, appellants say, Coronado residents cast their votes as members of an artificially created electorate, consisting of the voters of four cities, which reflected in no way the interests of Coronado citizens as residents of their individual municipality. They say that San Diego voters could shelter their intrinsic municipal interests from the wishes of the electors of the other four cities encompassed in

the proposed District while Coronado voters could not and that such classification "is wholly arbitrary and without rational justification."

This position by appellants appears without merit. We do not find any authority cited by appellants which requires that in a matter of general public concern the vote of one city must be given equal effect to the vote of any other without reference to the number of voters casting their ballots within each. Here the formation of the District was given a certain local option aspect but primarily it is a matter of general public interest. As a matter of law the scheme provided in Chapter 67 looking to formation of the District need not have been so oriented. Appellants have offered no valid reason why the Legislature could not have provided a system of voting without any reference whatsoever to residence in the *cities* involved. There is nothing before us to indicate why the Legislature chose the particular scheme embraced in Chapter 67, but we cannot agree with appellants that it was in any manner unfair or discriminatory as to them. Indeed had the votes of all of the constituent cities in the District, including San Diego, been counted as a unit rather than in two divisions, appellant City would clearly have been in a less favored and potent position, for each city's individual votes would have carried exactly the same weight regardless of size and population. There is no constitutional indication that vote clusters rather than individual votes within a state are the primary subject of protection by the organic law.

In *Gray v. Sanders*, 372 U.S. 368 (1963), the Court held that the Georgia County Unit System, which gave the votes of less populous counties greater weight than the votes of more populous counties, deprived voters in the more populous counties of equal protection. The Court stated:

> "The conception of political equality from the Declaration of Independence, to Lincoln's Gettysburg Address, to the Fifteenth [sic], Seventeenth, and Nineteenth Amendments can mean only one thing—one person, one vote."

And in *Sincock v. Duffy*, 215 F. Supp. 169 (D. Del. 1963) the court held, among other things, that a Delaware statute allotting each Delaware County equal representation in the State Senate deprived voters in the more populous counties of equal protection, notwithstanding the fact that the counties had been represented equally in the Delaware Senate and its precursor for over 200 years. The Court said that the basic principle governing apportionment of Senators must be that of "population representation."

Thus *Baker v. Carr, supra*, and "progeny" declare in effect that the Fourteenth Amendment requires the boundaries of cities and counties to be disregarded so that equal numbers of persons may be represented and have their votes counted with reasonable equality. To put it another way, in an election, not strictly local option in nature, the Fourteenth Amendment entitles one to have his vote counted with weight equal to that of another, not have his political subdivision's votes count equally to those of another political sub-

division, without reference to the number of people residing in either. "The Equal Protection Clause relates to equality between persons as such rather than between areas." The election here involved was by the Legislature cast in a local option mold only to the extent that the voters in each of the *two areas* delineated in the Act could, by a majority vote, have exercised a veto over formation of the District. Appellant, City of Coronado, however, had no constitutional right to which it has pointed to have this power of veto further restricted to the point where Coronado voters alone could veto formation of the District. (*Salsburg v. Maryland,* 346 U.S. 545, 551 (1954). Accord, *Missouri v. Lewis,* 101 U.S. 22 (1879).)

In *Wilson v. City of San Bernardino* (1960) 186 Cal. App. 2d 603, 611 appears the following language which is particularly appropriate to the situation presented here:

> "It would therefore clearly appear that when a general law of the state, adopted by the state Legislature, provides for a scheme of public improvement, the scope of which intrudes upon or transcends the boundary of one or several municipalities, together with unincorporated territory, such contemplated improvement ceases to be a municipal affair and comes within the proper domain and regulation of the general laws of the state."

Appellant's argument that the voting scheme did not reflect the "interests of Coronado citizens as residents of their municipality" does not change the rule, because that interest is not and cannot be legally pro-

tected excepting in purely local option voting for local objectives recognized and sanctioned as such by the State. Municipalities as a general concept, exist only as convenient conduits through which the State may administer its territory, and accordingly the State may, without violation of the Constitution, create and regulate or deny power to extend or limit the boundaries of municipalities, "consolidate two or more into one, overrule their unchartered legislative action whenever it is deemed unwise, impolitic, or unjust, and even abolish them altogether . . . and substitute in their place those which are different." (*Mount Pleasant v. Beckwith,* 100 U. S. 514, 529 (1879); *Laramie County v. Albany County,* 92 U. S. 307, 312-13. (1875).) "The regulation of municipalities is a matter peculiarly within the domain of the state. . . . The City cannot invoke the protection of the Fourteenth Amendment against the State." (*Newark v. New Jersey,* 262 U. S. 192, 196 (1923); *Williams v. Eggleston,* 170 U. S. 304 (1898).) Indeed, the Supreme Court has held that "no substantial federal question is presented" under the Fourteenth Amendment by a city's claim against its state. (*Trenton v. New Jersey,* 262 U. S. 182, 192 (1923), cited with approval in *Mallon v. City of Long Beach, supra,* 44 Cal. 2d 199, 209 [282 P. 2d 481] (1955).)

As to any legislative authority to create classifications for its purposes this language appears in *In re Herrera* (1943) 23 Cal. 2d 206, 212 [143 P. 2d 345]:

> "The authority and the duty to ascertain the facts which will justify classified legislation must of

> necessity rest with the legislature, in the first instance, to whom has been given the power to legislate and not to the courts and the decision of the legislature in that behalf is ordinarily conclusive upon the courts. Every presumption is in favor of the validity of the legislative act . . ."

See also *State of California v. Ind. Acc. Com.* (1957) 48 Cal. 2d 365 [310 P. 2d 7] and *Jersey Maid Milk Products Co. v. Brock,* (1939), 13 Cal. 2d 620 [91 P. 2d 577].

> "Wide discretion is vested in the Legislature in making the classification and every presumption is in favor of the validity of the statute; the decision of the Legislature as to what is a sufficient distinction to warrant the classification will not be overthrown by the courts unless it is palpably arbitrary and beyond rational doubt erroneous. [Citations.] A distinction in legislation is not arbitrary if any set of facts reasonably can be conceived that would sustain it." (*Sacramento M. U. Dist. v. Pacific Gas & Elect. Co.* (1942) 20 Cal. 2d 684, 693 [128 P. 2d 529]; *State of California v. Ind. Acc. Com. supra.*)

It appears therefore that respondents' demurrer to appellants' fourth count was properly sustained without leave to amend.

After incorporating by reference certain paragraphs of their first and fourth counts, appellants set forth their fifth count as follows:

> "Plaintiffs are informed and believe, and therefore allege, that the San Diego Unified Port

District will take over and assume a bonded indebtedness in excess of Fifteen Million Dollars ($15,000,000) incurred for harbor development and improvement by the City of San Diego which indebtedness will henceforth be an obligation of the plaintiff R. J. Townsend and others similarly situate in the City of Coronado pursuant to Section 67 of Chapter 67, which provides as follows:

'Sec. 67. The district shall take over and assume the bonded indebtedness incurred for development of tide and submerged lands of the county or any city specified in this act which shall have heretofore issued bonds or created any bonded indebtedness for harbor development or improvement in the Bay of San Diego and to issue any bonds for the retirement of any such outstanding bonded indebtedness. For the purpose of retiring bonds assumed by the district, the revenues, if any, from the facility or facilities constructed through the use of the bond proceeds shall be used to retire such bonds. Proceeds raised through taxation may also be used to retire such bonds.

'The district shall also take over and assume other indebtedness, including indebtedness arising out of contractual obligations, of the county or any city specified in this act which indebtedness shall have been incurred for development of tide and submerged lands.'

"Plaintiffs have been denied the due process of law guaranteed by the Fourteenth Amendment of the United States Constitution in that the City of Coronado has been denied the right as a self-governing municipal entity to vote on whether the City of Coronado should be included within

> said district, whether the aforesaid bonded indebtedness should become an obligation of the taxpayers of the City of Coronado, and whether said district should be established."

As is pointed out by respondents, it is true that the Coronado tidelands, as a part of the District, will be subject to the debt assumed by or incurred by the District. But since neither appellant has any proprietary interest in those tidelands, rendering them subject to the debts assumed by the District including San Diego's deprive appellants of nothing constitutionally protectable.

It will be noted that Chapter 67 provides that bond obligations of the District *shall* be retired through use of revenues derived from the facility or facilities constructed through use of the bond proceeds, and the proceeds raised through taxation *may* also be used to retire such bonds.

From this it appears entirely possible that the bonds assumed by the District may be completely retired through revenues derived from the facility or facilities constructed through use of the bond proceeds and that no direct obligation through taxes for payment of the assumed bonds will ever fall upon appellant Townsend or the other taxpayers of appellant City of Coronado. Unless and until a tax for retirement of said bonds should be levied it would not appear that appellant Townsend is deprived of any property or is saddled with any present obligation with or without due process of law. To be in legal position to question the Act appellants' affected in-

terest must be direct and immediate. (*Drumhiller v. Wright,* (1923) 64 Cal. App. 498 [222 Pac. 166].) In the levying of any tax the property of appellant City is of course exempt and it could never suffer property loss through such taxation.

Even assuming the threat of an immediate tax for purposes of retiring the bonds to be sufficiently substantial and imminent to constitute a taking of property, appellants' claim that such taking herein would be without due process of law cannot be supported.

Similar issues were presented in *Hunter v. Pittsburgh* (1907) 207 U. S. 161. The following language appears and even though it is characterized by appellants as dictum it would even so, being a pronouncement of the U. S. Supreme Court, be entitled to some persuasive influence:

> " 'The State . . . at its pleasure . . . may . . . expand or contract the territorial area [of a municipality], unite the whole or part of it with another municipality, repeal the charter and destroy the corporation. All this may be done, conditionally or unconditionally, with or without the consent of the citizens, or even against their protest. In all these respects the State . . . may do as it will, unrestrained by any provision of the Constitution of the United States. *Although the inhabitants and property owners may by such changes suffer inconvenience, and their property may be lessened in value by the burden of increased taxation, or for any other reason . . . there is nothing in the Federal Constitution which protects them from these injurious consequences.*' pp. 178-179 (emphasis added)."

Hunter v. Pittsburgh, supra, is referred to in *Gomillion v. Lightfoot* (1906), 364 U. S. 399 as follows:

> "'[*Hunter v. Pittsburgh* held that] a citizen of one municipality is not deprived of property without due process of law by being subjected to increased tax burdens as a result of the consolidation of his city with another. . . .
>
> "'[I]f one principle clearly emerges from the numerous decisions of this Court dealing with taxation it is that the Due Process Clause affords no immunity against mere inequalities in tax burdens, nor does it afford protection against their increase as an indirect consequence of a State's exercise of its political powers.' pp. 342-343."

In further derogation of the position taken by appellants in their fifth count in the complaint see also these cases: *Mount Pleasant v. Beckwith* (1879) 100 U. S. 514; *Morgan v. Beloit, City and Town* (1868) 74 U. S. 613; *Laramie County v. Albany County* (1875) 92 U. S. 307; *Mallon v. City of Long Beach, supra* (1955) 44 Cal. 2d 199 [282 P. 2d 199].

Assessing appellants' claims in the light of their allegations and the authorities discussed we must conclude that the legal rights of appellants have not been invaded by the provisions of Chapter 67 nor the questioned proceedings taken thereunder in formation of the San Diego Unified Port District. Appellants do not question that they were duly represented in the Legislature which passed Chapter 67 and from all that appears they, as well as all Coronado voters, were by the Act, accorded proportionate voting

strength in the election held to sanction and which did sanction formation of the District. The authorities set forth above clearly hold that this court cannot substitute its judgment for that of the Legislature when it set up the two area voter classification, particularly when this classification gave to the vote of appellant Townsend and all other Coronado electors greater weight than to the individual votes in the San Diego section. We see no particular in which any count in the complaint could be amended to state a cause of action and therefore hold as to all counts that the demurrers were properly sustained without leave to amend.

The judgment is affirmed.

Finley, J. Pro Tem.

We concur:
Griffin, P. J.
Coughlin, J.

Filed: May 26, 1964,
Geo. J. Kobelin, Clerk.

Appendix "B"

STATUTES AND CODE AMENDMENTS 1962 1ST EXTRAORDINARY SESSION

SAN DIEGO UNIFIED PORT DISTRICT ACT

CHAPTER 67

Senate Bill No. 41

An act to provide for the establishment of the San Diego Unified Port District [Harb. & Nav.C.App. 1, § 1 et seq.]; to provide for the calling of municipal elections therefor; describing the powers, duties, and functions thereof, authorizing the district to borrow money and issue bonds for district purposes; to provide means of raising revenues for the operation, maintenance and bond redemption of the district; and to provide for the transfer to such district of tidelands and lands lying under inland navigable waters.

The people of the State of California do enact as follows:

Section 1. This act shall be known and may be cited as the San Diego Unified Port District Act.

Sec. 2. It is hereby declared to be the policy of the State of California to develop the harbors and ports of this State for multiple purpose use for the benefit of the people. A necessity exists within San Diego County for such development. Because of the several separate cities and unincorporated populated areas in the area hereinafter described, only a specially created district can operate effectively in developing the harbors and port facilities. Because of the unique problems presented by this area, and the facts and circumstances relative to the development of harbor and port facilities, the adoption of a special act and the creation of a special district is required.

Sec. 3. For the purposes of this act the following words shall have the following meanings:

(a) "District" or "port district" shall mean the San Diego Unified Port District.

(b) "Board" or "board of commissioners" shall mean the Board of Commissioners of the San Diego Unified Port District.

(c) "County" shall mean the County of San Diego.

Sec. 4. A port district for the acquisition, construction, maintenance, operation, development and regulation of harbor works and improvements, including rail, water and air terminal facilities, for the development, operation, maintenance, control, regulation and management of the Harbor of San Diego upon the tidelands and lands lying under the inland navigable waters of San Diego Bay, and for the promotion of commerce, navigation, fisheries, and recreation thereon, may be established or organized and governed as provided in this act and it may exercise the powers expressly granted herein.

Anything herein to the contrary notwithstanding, the powers and authority herein are to be used only as necessary or incident to the development and operation of a port and shall not apply to public utilities operated under the jurisdiction of the Public Utilities Commission of the State of California.

Sec. 5. The area to be embraced in the district shall include all of the corporate area of each of the cities of San Diego, Chula Vista, Coronado, National

City, and Imperial Beach which establisn the district as provided in this act, and any unincorporated territory in the County of San Diego contiguous thereto, which is economically linked to the development and operation of the Bay of San Diego, included in the district by the board of supervisors of the county as provided in this act.

The jurisdiction of the district to exercise its powers shall extend only over the following areas:

(a) The tidelands and submerged lands granted to the district pursuant to the provisions of this act.

(b) Any airport or airports now or hereafter owned and operated by any of the above-named cities which establish the district, or San Diego County, and which are conveyed to the district by such city or cities or San Diego County.

(c) Any other lands conveyed to the district by any city or by the County of San Diego.

Sec. 6. The Board of Supervisors of San Diego County shall call an election in the area to be included within the district not later than the 1964 State Primary Election on the question of the formation of the district if either of the two conditions specified below is met:

(a) A petition calling for the formation of the district is filed with the board of supervisors from each of the five cities specified in Section 5. Each of the petitions from the five respective cities shall be signed by at least five percent (5%) of the voters registered for the last municipal election in each particular city.

(b) A resolution of consent calling for the formation of the district is filed with the board of supervisors from each of the city councils of the five cities specified in Section 5; provided, that the requirements of this section shall be deemed to have been met if a combination of petitions and resolutions of consent have been filed with the board of supervisors, so long as each of the five cities specified in Section 5, either through a petition or by a vote of the city council, has authorized the calling of an election for the formation of the district.

Sec. 7. The petition or the resolution of consent shall contain:

(a) A declaration calling for the creation of the San Diego Unified Port District, for the purpose of improving and developing the harbor.

(b) A declaration that the tide and submerged lands owned by the particular city should be granted to the district.

Sec. 8. Each signer of a petition within a particular city shall be a registered voter and resident of that city.

Sec. 9. The publication of the petition and the hearing on the petition shall be governed by the provisions of Section 6014 of the Harbors and Navigation Code.

Sec. 10. The election shall be called, noticed, held, and conducted, election officers appointed, voting precincts designated, ballots printed, polls opened and

closed, ballots counted and returned, returns canvassed, results declared, oaths of office administered, and all other proceedings incidental to and connected with the election shall be regulated and done, as nearly as may be practicable, in accordance with the provisions of law regulating municipal elections in general law cities.

For the purposes of the election, the terms "board of trustees" and "city clerk," respectively, as used in the Elections Code provisions respecting the conduct of elections in general law cities, shall mean the county board of supervisors and the county clerk, respectively, for the purpose of the election held under this act.

An election called pursuant to the provisions of this act may be consolidated with any other election pursuant to the provisions of Chapter 4 (commencing with Section 23300) of Part 2 of Division 12 of the Elections Code.

Sec. 11. The count of the vote in the election shall be conducted in two parts. One part shall consist of those votes cast in the City of San Diego, and the other part shall consist of all of those votes cast in the other four cities specified in Section 5 and outside territory.

Sec. 12. If the electors in the City of San Diego and the electors in the other four cities specified in Section 5 and outside territory, approve of the formation of the district at an election held pursuant to the provisions of this act, the district shall be established.

Sec. 13. If from the canvass it appears and the board of supervisors finds that a majority of the votes cast in the City of San Diego and a majority of the votes cast in the other four cities and outside territory, the votes of such other four cities and outside territory being combined together, were cast in favor of the formation of the district, it shall enter that fact upon its minutes, together with a description of the boundaries of the district, its name, the official name or names by which the district is commonly known and enter its order declaring the district duly formed and existing in the county.

Sec. 14. Upon the establishment of the district, every city specified in Section 5 shall convey to the district all its right, title and interest in and to the tidelands and submerged lands, together with any facilities thereon, which are owned by the city, including any such lands which have been granted in trust to the city by the State in the Bay of San Diego. The City of San Diego shall convey to the district all its right, title and interest in and to such pueblo lands as lie within the tidelands and submerged lands in the Bay of San Diego, together with any facilities thereon, which are owned by the City of San Diego. Thereafter the title to such lands shall reside in the district, and the district shall hold such lands in trust for the uses and purposes and upon the conditions which are declared in this act. Notwithstanding any other provision of this act, the City of San Diego shall not be required to convey to the district those lands described in Chapter 778 of the Statutes of 1929, and the City of Coronado shall not be required to convey to the

district those lands described in Chapter 1839 of the Statutes of 1953.

Sec. 15. The Board of Supervisors of the County of San Diego may, by ordinance, include within the district unincorporated territory which the board has determined would be benefited by the district.

Sec. 16. The district shall be governed by a board of commissioners who shall be known as "port commissioners." Each city council, respectively, of the cities which are included in the district pursuant to the provisions of this act shall appoint the commissioner or commissioners to which it is entitled, pursuant to this section, to represent that particular city on the board. Three of the commissioners shall be residents of the City of San Diego, one shall be a resident of the City of National City, one shall be a resident of the City of Chula Vista, one shall be a resident of the City of Coronado, and one shall be a resident of the City of Imperial Beach. The commissioners shall be residents of the respective cities they represent at the time of their appointments, and during the term of their office. All of the powers and duties conferred upon the district shall be exercised through the board of commissioners.

Sec. 17. The term of each commissioner shall be for four years, except as provided in this section. Any vacancy shall be filled by appointment by the city council of the city from which the vacancy has occurred. Each commissioner shall continue, however, to hold office until his successor has been appointed and qualified. Each commissioner, before entering

upon the duties of his office, shall take and subscribe the oath as provided in Section 1360 of the Government Code of the State of California, and a certificate of the same shall be filed with the city clerk of the city from which the commissioner shall have been appointed, and a copy of which shall be filed with the district. A commissioner may be removed from the board by a four-fifths vote of the city council which appointed such commissioner.

The first board of commissioners appointed after the formation of the district shall so classify themselves by lot that three commissioners shall serve for four years, and the remainder of the commissioners for two years. Thereafter the term of office of each commissioner shall be four years.

Sec. 18. Immediately after their appointment, the commissioners shall enter upon the performance of their duties. The board shall annually elect one of its members as chairman and another as vice chairman, and shall also elect annually a secretary, who may or may not be a member of the board. A majority shall constitute a quorum for the transaction of business. The board shall make rules and regulations for its own government and procedure, and shall hold at least one regular meeting each month, and may hold such special meetings as it may deem necessary.

The commissioners shall receive no salaries but shall be entitled to reimbursement for necessary traveling and other expenses incurred while engaged in the performance of their duties.

Sec. 19. The board shall draft a master plan for harbor and port improvement and for the use of all of the tidelands and submerged lands which shall be conveyed to the district pursuant to the provisions of this act. A two-thirds vote of the board shall be required to adopt the plan. The board may from time to time modify the master plan by a two-thirds vote of the board.

The provisions in the master plan shall not override or supersede any local existing zoning ordinance which was in effect on April 30, 1962; provided, that if any local zoning ordinance is repealed, or expires, or becomes nonoperative for any reason, thereafter the provisions of the master plan adopted by the board shall control as to all lands and waters under the jurisdiction of the district.

Sec. 20. The board shall establish a fiscal year for its operations and shall at the end of each fiscal year or as soon as possible after the end of each fiscal year, make a complete report of the affairs and financial condition of the district for the preceding fiscal year, which shall show the sources of all receipts and the purposes of all disbursements during the year. The report shall be verified by the chairman of the board and the secretary thereof. The board shall draw up a budget for each fiscal year.

Sec. 21. The board may pass all necessary ordinances and resolutions for the regulation of the district.

Sec. 22. The board may employ engineers, attorneys and any other officers and employees necessary in the work of the district. The port director shall appoint a treasurer whose duty it shall be to receive and safely keep all moneys of the district. He shall comply with all provisions of law governing the deposit and securing of public funds. He shall pay out moneys only on warrants duly authorized by the board and not otherwise; provided, however, that no warrants need be issued for the payment of principal and interest on bonds of the district. He shall at regular intervals, at least once each month, submit to the secretary of the district a written report and accounting of all receipts and disbursements and fund balances, a copy of which report he shall file with the board.

The treasurer may appoint a deputy or deputies for whose acts he and his bondsmen shall be responsible. Such deputy or deputies shall hold office subject to the pleasure of the treasurer and shall receive such compensation as may be provided by the board. The treasurer shall execute a bond covering the faithful performance by him of the duties of his office and his duties with respect to all moneys coming into his hands as treasurer in such amount as shall be fixed by resolution of said board. The surety bond herein required shall be executed only by a surety company authorized to do business in the State of California and the premium therefor shall be paid by the district out of its general fund. The bond shall be approved by the board and filed with the secretary of the district. The treasurer before entering upon the duties

of his office shall take and file with the secretary of the district the oath of office required by the Constitution of this State.

Sec. 23. It may sue and be sued in the name of the district in all courts and tribunals of competent jurisdiction.

Sec. 24. It may adopt a seal.

Sec. 25. It may take by grant, purchase, gift, devise, lease or otherwise acquire, hold and enjoy and lease and dispose of real and personal property of every kind, within the district, necessary to the full or convenient exercise of its power.

Sec. 26. Any proposed use by the district of any particular land within its jurisdiction which would constitute a public nuisance may be prohibited by ordinance adopted by the city within which such land is located.

Sec. 27. It may exercise the right of eminent domain within the boundaries of the district in the manner provided by law for the condemnation of private property for public use and take any property necessary or convenient to the exercise of its powers. In the proceedings relative to the exercise of such right the district has the same rights, powers and privileges as a municipal corporation.

Sec. 28. It may borrow money and incur indebtedness and issue bonds or other evidence of indebtedness. All bond elections called by the board shall be conducted and held pursuant to Article 1 (commencing

with Section 43600) of Chapter 4 of Division 4, Title 4 of the Government Code.

When in that article, the word "city" is used it includes the district and whenever the words "legislative body" are used they mean the board.

The purposes for which bonded indebtedness may be incurred by the district are described in Section 26.

All bonds issued shall be signed by the board and the district shall not incur a bonded indebtedness which in the aggregate exceeds 15 percent of the assessed value of all the real and personal property in the district.

Sec. 29. Whenever the improvement and development work for which any issue of bonds has been voted has been constructed and the proceeds of the bonds sold have not been entirely expended, the board may by resolution order that the unexpended proceeds be placed in the fund provided for the purpose of paying principal and interest of the bonds or the board may by resolution direct that all or a part of the unexpended proceeds be used for the purpose of purchasing outstanding bonds of the district. The bonds may be purchased only after the publication at least twice in a newspaper of general circulation in the district of a notice inviting sealed proposals for the sale of bonds to the district. The notice shall state the time and place when the proposals will be opened and the amount of money available for the purchase of the bonds. The board may reject any or all proposals and if it rejects all thereof, may within a period of

30 days thereafter purchase for cash any outstanding bonds of the district but in that event the purchase price shall not be more than the lowest purchase price at which bonds were tendered to the district in the public bidding.

Any bonds purchased under the authority of this section shall be canceled immediately.

Sec. 30. The board may regulate and control the anchoring, mooring, towing, and docking of all vessels.

Sec. 31. It may perform the functions of warehousemen, stevedores, lighterers, reconditioners, shippers and reshippers of properties of all kinds.

Sec. 32. It may manage the business of the district and promote the maritime and commercial interests by proper advertisement of its advantages and by the solicitation of business within or without the district, within other states or in foreign countries, through such employees or agencies as are expedient.

Sec. 33. It may acquire, purchase, take over, construct, maintain, operate, develop, and regulate grain elevators, bunkering facilities, belt or other railroads, floating plants, lighterage, towage facilities, and any and all other facilities, aids, equipment, or property necessary for or incident to the development and operation of a harbor or for the accommodation and promotion of commerce, navigation, fisheries, or recreation in the district.

Sec. 34. It may by resolution order that all or any of the funds under its control and not necessary for current operating expenses be invested in obligations,

bonds or securities of the United States of America or of any agency or instrumentality thereof.

Sec. 35. The board may do all other acts necessary and convenient for the exercise of its powers.

Sec. 36. The board shall by ordinance fix the rate of wharfage charges and other charges which are appropriate for the use of any of the facilities owned and constructed or services furnished or provided by the district.

Sec. 37. The district may itself, without letting contracts therefor, do work and make improvements. The work shall be done under the direction of its officers or employees.

In the construction, reconstruction or repair of public buildings, streets, utilities and other public works, and in furnishing supplies, materials, equipment or contractual services for the same, when the expenditure therefor shall exceed the sum of two thousand five hundred dollars ($2,500), the same shall be done by written contract, except as otherwise provided in this act, and the board, on the recommendation of the port director, shall let the same to the lowest responsible and reliable bidder, not less than 10 days after advertising for one day in the official newspaper of the district for sealed proposals for the work contemplated. If the cost of the public contract work exceeds the sum of one thousand dollars ($1,000), but is not in excess of two thousand five hundred ($2,500), the board may let the contract without advertising for bids, but not until the port director shall have

secured competitive prices from contractors interested, which shall be taken under consideration by the board before the contract is let. The board may, however, upon the recommendation of the port director and by a vote of five of its members, order the performance of any such construction and reconstruction or repair work by appropriate district forces when the estimates submitted as part of the port director's recommendation indicate that the work can be done by the district forces more economically than if let by contract.

In case of a great public calamity, such as extraordinary fire, flood, storm, epidemic or other disaster the board may, by resolution passed by a vote of five of its members, determine and declare that the public interest or necessity demands the immediate expenditure of district money to safeguard life, health or property, and thereupon they may proceed, without advertising for bids or receiving the same, to expend, or enter into a contract involving the expenditure of, any sum required in such emergency, on hand in the district fund and available for such purpose. All contracts before execution shall be approved as to form and legality by the attorney for the district.

Sec. 37.5. The board may, without advertising for bids, negotiate with the government of the United States for the purpose of assisting the board in the performance of any of the work authorized by this act, and the board may contribute to the United States all or any portion of the estimated cost of any work authorized by this act which is to be done by or under contract with the United States.

Sec. 38. By resolution, the board may provide for the creation and accumulation of a fund for capital outlays.

Sec. 39. At any time after the creation of the fund, the board may transfer to the Capital Outlay Fund any unencumbered surplus funds raised for any purpose whatever, remaining on hand at the end of any fiscal year or years.

Sec. 40. The Capital Outlay Fund shall remain inviolate for the making of any capital outlays and the money shall not be disbursed from the fund except for such a purpose unless the district board submits a proposition to the electors of the district to obtain their consent to use the money in the fund for some other specific purpose. The proposition may be submitted at any election. A two-thirds vote of all the voters voting at the election is necessary to authorize the expenditure of the money for such other purpose.

Sec. 41. Notwithstanding any other provision of this act, the board may borrow money by issuance of promissory notes, or execute conditional sales contracts to purchase personal property, in an amount or of a value not exceeding in the aggregate at any one time the sum of two hundred thousand dollars ($200,000), for the purposes of constructing or operating any work, project, or facility authorized by Section 26 or for the making of improvements or the purchase of equipment or for the maintenance thereof.

All moneys borrowed pursuant to this section shall not be borrowed for a term exceeding five years, and said indebtedness shall not incur a rate of interest in

excess of six percent (6%) per annum. Each such indebtedness shall be authorized by a resolution of the board of commissioners unanimously adopted.

As a condition precedent in the borrowing of any money or the execution of any conditional sales contract, as provided in this section, in excess of twenty-five thousand dollars ($25,000), the board shall first unanimously approve by resolution and have on file a report approved by the port director on the engineering and economic feasibility relating to the project contemplated for the expenditure of said borrowed money or conditional sales contract. Said feasibility report shall be prepared and signed by an engineer or engineers licensed and registered under the laws of the State of California.

The district shall budget, levy and collect taxes, and pay for all such indebtedness without limitation by any other provision of this act.

Sec. 42. As to any service which the district is authorized to perform pursuant to the provisions of this act, the district may contract for the performance of such service by the city within which the particular tidelands are located.

Sec. 43. All bonds issued pursuant to this act, except for those authorized by Sections 51 and 52 of this act, are obligations of the district and so long as the bonds are outstanding and unpaid the board of supervisors of the county shall at the time of fixing the general tax levy and in the manner provided for such general tax levy until the bonds are paid or until there is a sum in the treasury of the district set apart for

that purpose, sufficient to meet all sums coming due for principal and interest, levy and collect annually a tax sufficient to pay the annual interest on such bonds as it comes due and such part of the principal thereof as will become due before the proceeds of another tax levy made at the time of the next general tax levy for county purposes can be made available for the payment of said principal.

In the event the district has moneys on hand in any year sufficient to meet all or part of the sum coming due for principal and interest on the bonds prior to the time that the proceeds of a tax levy made at the time of the next general tax levy for county purposes can be made available for the payment of the principal and interest and the moneys have been placed in a fund for the purpose of payment of the principal and interest the amount of moneys to be raised by the annual tax for that year may be reduced to a sum sufficient to provide the balance of moneys necessary for the purpose of payment of the principal and interest.

All taxes collected for the payment of principal and interest, shall when collected by the county tax collector, be paid to the treasurer of the district.

Sec. 44. The board shall, at least 30 days before the meeting of the board of supervisors at which the general tax levy is fixed, notify the board of supervisors in writing of the amount of money necessary to be raised by taxation to meet the payment of principal and interest on outstanding bonds which will become payable before the proceeds of another tax levy made

at the time of the next general tax levy for county purposes can be made available for payment of the principal and interest. In fixing the amount of money to be raised by taxation the board of commissioners may take into account all moneys on hand and set aside in a fund for the purpose of paying the principal and interest and the amount of moneys to be raised by taxation shall be the amount required in addition to any moneys on hand and so set aside for the purpose of payment of the principal and interest.

Sec. 45. The taxes shall be levied upon all of the taxable property within the district taxable for county purposes and are in addition to all other taxes levied for all other county purposes and shall be collected at the same time and in the same manner as other county taxes are collected and shall be used for no purpose other than for the payment of the bonds and accrued interest.

Sec. 46. On or before the 15th of June of each year, the district board shall estimate and determine the amount of money required by the harbor district and shall adopt a preliminary budget which shall be divided into the following main classes:

(1) Ordinary annual expenses.

(2) Capital outlay and Capital Outlay Fund.

(3) Prior indebtedness.

Sec. 47. On or before the 15th day of June of each year, the board shall publish a notice pursuant to Section 6061 of the Government Code throughout the district stating:

(1) That the preliminary budget has been adopted and is available at a time and at a place within the district specified in the notice for inspection by interested taxpayers.

(2) That on a specified date not less than one month after the publication of the notice and at a specified time and place, the district board will meet for the purposes of fixing the final budget, and that any taxpayer may appear and be heard regarding the increase, decrease or omission of any item in the budget or for the inclusion of additional items.

Sec. 48. At the time and place designated in the published notice for the meeting, any taxpayer may appear and be heard regarding the increase, decrease or omission of any item in the budget or for the inclusion of additional items. The hearing on the budget may be continued from time to time.

Sec. 49. The district board shall report the final budget to the board of supervisors after the budget hearing but not later than the first day of August each year after making any changes in the preliminary budget it deems advisable during or after the hearing, including deductions, increases or additions.

Sec. 49.5. The Board of Supervisors shall at the time of levying the county taxes levy a tax upon all the taxable property within the district sufficient to meet the amounts set forth in the final budget submitted by the district board. The money when collected by the tax collector of the county shall be paid to the treasurer of said district; provided further, that any

levy for capital outlay or for Capital Outlay Fund shall not exceed three cents ($0.03) per hundred dollars ($100) assessed valuation of all real and personal property in the district.

Sec. 50. Bonds issued by the district pursuant to this act are legal investments for all trust funds, and for the funds of all insurers, banks, both commercial and savings, and trust companies, and for the state school funds, and whenever any money or funds may, by law now or hereafter enacted, be invested in bonds of cities, cities and counties, counties, school districts or municipalities in this State, such money or funds may be invested in bonds of the district organized pursuant to this act.

Sec. 51. The district may create a revenue bond indebtedness for the acquisition and construction, or acquisition or construction of any improvements or property or facilities contained within its powers. The issuance of the bonds shall be authorized by ordinance adopted by two-thirds of all the members of the board, to take effect upon its publication. The secretary shall publish the ordinance once in a newspaper of general circulation printed in the district, and if there is none, then in such newspaper published in the county in which the district is located. The ordinance shall specify the total amount, denomination, method of maturity, and the rate or maximum rate of interest of the bonds, and in general terms, the acquisitions and improvements to be constructed thereby; and, in addition, shall contain such other and further provisions as in the judgment of the board are deemed advisable.

Sec. 52. The proceeds of the revenue bonds shall be placed in an account in the treasury of the district to be entitled San Diego Unified Port District Revenue Construction Fund No. ....., and used exclusively for the objects and purposes mentioned in the ordinance. The lien of the bonds of the same issue shall be prior and superior to all revenues bonds subsequently issued. Proceedings for the issuance of the bonds shall be had, the board shall have such powers and duties, and the bondholders shall have such rights and remedies, all in substantial accordance with and with like legal effect as provided in Sections 54344 to 54346, inclusive, 54347, 54348, 54350, 54351, 54352, and in Articles 4 to 11, inclusive, of Chapter 6, Part 1, Division 2, Title 5 of the Government Code. As used therein the word "resolution" shall mean ordinance, the words "local agency" shall mean district, and the words "legislative body" shall mean board.

Sec. 53. In the manner provided in this act, there may be annexed to the district any of the following territory which is in the same county as the district:

a. Any territory contiguous to the district.

b. Any territory, any point of which touches the district.

c. Any territory separated from the district by a "separating barrier," which term includes a street, road, highway, railway line, railway crossing, railway right-of-way, watercourse, lagoon, or other natural barrier.

d. Any territory specified in this section may consist of one or more separate parcels of land, but it is not necessary that all parcels shall constitute in the aggregate one tract of land.

Sec. 54. Any territory specified in Section 53 may be annexed in the manner provided for sanitary districts in the Health and Safety Code. The alteration of boundaries shall be ordered by the board of supervisors of the county in which the property is located.

Sec. 55. The board shall:

(a) Make and enforce all necessary rules and regulations governing the use and control of all navigable waters and all tidelands and submerged lands, filled or unfilled, and other lands within the territorial limits of the district.

(b) Regulate and control the anchoring, mooring, towing and docking of all vessels.

(c) Establish and maintain a system of harbor police and may establish harbor fire protection within the territorial limits of the district for the enforcement of the ordinances, rules and regulations of the district, and employ the necessary officers, who shall as to such matters have all the power of peace officers and firemen within the district; or in the alternative, the district may contract with the municipalities whose territorial limits are adjacent to or contiguous to those of the district to provide such services.

Sec. 56. The board shall make and enforce such local police and sanitary regulations relative to the

construction, maintenance, operation and use of all public services and public utilities in the district, operated in connection with or for the promotion or accommodation of commerce, navigation, fisheries, and recreation therein as are now vested in the district.

Sec. 57. The board may acquire, erect, maintain or operate within the district, all improvements, utilities, appliances or facilities which are necessary or convenient for the promotion and accommodation of commerce, navigation, fisheries, and recreation, or their use in connection therewith upon the lands and waters under the control and management of the board, and it may acquire, maintain and operate facilities of all kinds within the district.

Sec. 58. In case of emergency the board may suspend, modify or amend any rule or regulation of the board, or it may place in effect any emergency rule or regulations, for periods not exceeding thirty (30) days, and every such ordinance shall so provide.

Sec. 59. Any person who violates the provisions of any ordinance, or any local police or sanitary regulation, of the board shall be guilty of a misdemeanor. The prosecution shall be conducted by the City Attorney of San Diego if the infraction occurred within the corporate limits of the City of San Diego on lands or waters subject to the jurisdiction of the district. The prosecution shall be conducted by the District Attorney of San Diego County if the infraction occurred without the corporate limits of the City of San Diego but otherwise on lands or waters subject to the

jurisdiction of the district. The complaint shall be filed in the judicial district within which the infraction occurred.

Sec. 60. In the absence of the adoption of any police, fire and sanitary regulations by the district, the police, fire and sanitary regulations of any municipal corporation whose boundaries are adjacent to or contiguous to the territorial limits of the district shall be applicable.

Sec. 62. The enacting clause of all ordinances passed by the board shall be in substantially the following form:

"The Board of Port Commissioners of San Diego Unified Port District do ordain as follows:"

All ordinances and resolutions shall be signed by the chairman of the board and attested by the clerk.

Sec. 63. All ordinances and resolutions shall be entered in the minutes. All ordinances passed by the board shall be published, with the names of the members voting for and against them at least once in some daily newspaper of general circulation printed and published in the County of San Diego.

Sec. 64. An ordinance passed by the board shall not go into effect until the expiration of 30 days from its publication.

This section does not apply to any ordinance ordering or otherwise relating to:

(a) An election.

(b) The adoption of the annual budget.

(c) The bringing or conducting of suits or actions.

(d) The condemnation of private property for public use.

(e) The immediate preservation of the public peace, health or safety, which ordinance shall contain a specific statement showing its urgency and be passed by a two-thirds vote of the board.

All ordinances of the classes excepted, take effect upon their publication. A grant or franchise, lease, right or privilege shall never be construed to be an urgency measure.

All grants of franchises, leases, rights or privileges shall be made by ordinance.

Irrevocable permits shall not be granted or issued to any person.

Sec. 65. The district created in accordance with the provisions of this act is a public corporation created for the purposes set forth herein.

Sec. 66. The district may contribute money to the federal or the state government or to the county in which it is located or to any city within the district, for the purpose of defraying the whole or a portion of the cost and expenses of work and improvement to be performed, either within or without the territorial limits of the district, by the federal, state, county or city government, in improving rivers, streams, or in doing other work, when such work will improve navigation and commerce, in or to the navigable waters in the district.

Sec. 67. The district shall take over and assume the bonded indebtedness incurred for development of tide and submerged lands of the county or any city specified in this act which shall have heretofore issued bonds or created any bonded indebtedness for harbor development or improvement in the Bay of San Diego and to issue any bonds for the retirement of any such outstanding bonded indebtedness. For the purpose of retiring bonds assumed by the district, the revenues, if any, from the facility or facilities constructed through the use of the bond proceeds shall be used to retire such bonds. Proceeds raised through taxation may also be used to retire such bonds.

The district shall also take over and assume other indebtedness, including indebtedness arising out of contractual obligations, of the county or any city specified in this act which indebtedness shall have been incurred for development of the tide and submerged lands.

Sec. 68. The State hereby consents to the county or any city which has elected to join the district established under the provisions of this act to grant its right, title and interest in and to the tidelands, submerged lands, whether filled or unfilled, swamp, overflowed, and salt marshlands in the Bay of San Diego, which are owned by the county or any city, including any such lands which have been granted in trust to the county or city by the State, to the district in trust for the uses and purposes and upon the conditions specified in this act. The county or such city may also transfer, relinquish and surrender to the district its

power to manage, conduct and operate the harbor in or adjacent to which such portion of such lands are situated. The district shall, upon its establishment in accordance with the provisions of this act, become the successor of the county or such city whose tide and submerged lands shall have been included therein with respect to the management, conduct and operation of the harbor and with respect to the use, possession and title to such portions of such lands, and they shall continue to be held and used by the district pursuant to this act.

Sec. 69. If the district is dissolved by operation of law, or otherwise, any such lands so granted thereto pursuant to this act, together with any and all improvements thereon, and the management, conduct and operation of such harbor, reverts to and is revested in the county or city so granting the same to the district. The lands reverting to the cities or the county pursuant to this section shall be held by the respective cities or the county in trust subject to the conditions, terms, and purposes of this act.

Sec. 70. Whenever the district is established under the provisions of this act it is the successor of the county and each of the cities included therein as to all powers theretofore vested in the county or each such city or exercisable by its officers, which are by the provisions of this act granted to the district or are exercisable by its officers. Such powers are relinquished by the county and the cities and surrendered to the district. The title to, and possession and control of, any works, structures, appliances, improvements

and equipment of the kinds designated in this act, owned or held by or in trust for the county and each of the cities, or by any officer or board thereof, in trust or otherwise, for any purpose for which the district is authorized to acquire and use property pursuant to this act, are upon the establishment of the district, transferred to and vested in the district and are thereafter owned, operated and controlled by the district pursuant to this act.

Sec. 71. Upon the establishment of the district, all persons then occupying the several offices of or under the government, of the county and each of the cities included therein, except as otherwise provided, whose several powers and duties are within the powers of the district or within the powers or duties of the several officers thereof, shall immediately quit and surrender the occupancy or possession of such offices which shall thereupon cease and determine, except as to any persons who have powers and perform duties for the county and the cities other than those mentioned, whose offices shall not cease and determine as to such other powers and duties but shall continue with respect thereto the same as if the district had not been established.

Notwithstanding the provisions contained in this section, all employees of the county and any city performing duties in connection with the Port of San Diego or the respective harbor departments, shall be blanketed in as employees of the district; and the district is empowered to contract with the State Employees' Retirement System and may provide retire-

ment and disability benefits for employees under the State Employees' Retirement System pursuant to its rules and regulations. The district may, by contract, continue such employees of the district so blanketed in as members of the retirement system of which they were members while they were employees of the respective cities.

Sec. 72. The officers of the district shall be:

(a) An auditor.

(b) A port director.

(c) An attorney.

(d) A clerk.

(e) A treasurer.

(f) A chief engineer.

The auditor, port director, and attorney shall be appointed by the board. All other officers shall be appointed by the port director and confirmed by the board.

Sec. 73. The salaries of the officers shall be fixed by the board by ordinance. The auditor and attorney shall hold office at the pleasure of the board. All other officers shall be appointed from a classified civil service. All officers shall give such bond as is prescribed by the board; the premium on all bonds on officers and employees shall be paid by the district. All other officers or employees shall be appointed by the port director from a classified civil service. The board shall establish a classified civil service for all offices and phases of employment other than the offices specified herein.

Sec. 75. The board may adopt civil service rules and regulations in accordance with the following provisions:

(a) The civil service rules and regulations shall provide:

(1) For the qualifications and examination of all applicants for employment and for the employment of persons on probation.

(2) For the registration of persons, other than unskilled laborers, in the classified civil service, in accordance with their general average standing upon examination.

(3) For promotions on the basis of ascertained merit and seniority in service and examination, and for competitive examinations for promotions.

(4) For the reassignment of persons injured in the service of the district who were at the time of injury actually engaged in the discharge of the duties of their positions.

(5) For leaves of absence.

(6) For the transfer from one position to a similar position of the same class.

(7) For the reinstatement to the list of eligibles on recommendation of the port director, of persons who have become separated from the service or have been reduced in rank, other than persons who have been removed for cause.

(8) For the keeping of service records of all employees in the civil service, and for their use as one

of the bases for promotions or layoffs through stoppage or lack of work.

(9) For the procedure for the removal, discharge or suspension of employees; for the investigation by the board of the grounds thereof, and for the reinstatement or restoration to duty of persons found to have been removed, discharged or suspended for insufficient grounds or for reasons which are not sustained by investigation.

(10) Generally for any other purpose which may be necessary or appropriate to carry out the objects and purposes of the civil service system and the rules herein specifically authorized.

(b) Upon the request of the port director, the following persons may be exempted by the board, by ordinance, from the civil service:

(1) Persons employed to render professional, scientific, technical or expert service of a temporary or exceptional character.

(2) The first and second deputies or assistants of any officer of the district or of the chief engineer in the service of the district.

(3) Persons employed on the construction of district works, improvements, buildings or structures.

(4) Persons receiving a salary not exceeding fifty dollars ($50) a month.

Any exemption so made may be terminated at any time by resolution of the board.

(c) All officers and employees who, at the time of the establishment of the district, would be included in

the classified civil service of the district, if a classified civil service is established, and who have been continuously in the service of the harbor department of a municipal corporation included in the district for a period of six months prior to the district's establishment, are deemed to have the necessary qualifications required by the provisions of this act and they retain the same respective or equivalent positions as nearly as practicable under the district which they formerly held in such municipal corporation.

(d) All officers and employees who, at the time of the establishment of the district, would be included in the classified civil service, if a classified civil service is established, but who have been in the service of the harbor department of any such municipal corporation for a period of less than six months, are deemed to be in the service of the district under probation, and are subject to the same regulations as other applicants for appointment to the civil service of the district serving under probation in accordance with rules and regulations established by the board.

Sec. 76. Nothing herein contained shall prevent the board from contracting with the County of San Diego to utilize the services of its civil service commission office or department to effectuate the purposes hereof.

Sec. 77. The salaries or wages of all officers and employees of the district shall be paid either monthly, semimonthly or weekly as the board by ordinance may determine.

Sec. 78. Such persons shall severally forthwith deliver and turn over to the proper officers of the dis-

trict, all property of the county and each city in their hands or under their control including any and all works, structures, appliances, improvements and equipment of the character, kinds or classes enumerated or designated in this act and pertaining to harbor improvements or affairs.

Sec. 79. The provisions of this act shall apply to any municipal corporation which is governed under a freeholders' charter even if such provisions are inconsistent with the charter or its amendments, it being hereby declared that such provisions are a matter of statewide concern and are to prevail over any inconsistent provisions in any such charter. If the district is dissolved by operation of law or otherwise, any such works, structures, appliances, improvements and equipment are vested in such municipal corporation, together with any other works, structures, appliances, improvements and equipment acquired or constructed by the district in that portion of the district within the limits of each such municipal corporation respectively.

Sec. 80. All money received or collected from or arising out of the use or operation of any harbor or port improvement, work, appliance, facility or utility, or vessel, owned, controlled or operated by the district; all tolls, charges and rentals collected by the board, and all compensations or fees required to be paid for franchises or licenses, or otherwise by law or ordinance or order, to the district for the operation of any public service utility upon lands or waters under the control and management of the board, shall

be deposited in the treasury of the district to the credit of a fund to be known as the San Diego Unified Port District Revenue Fund. The money in or belonging to the fund shall not be appropriated or used for any purpose except those enumerated in this act.

Sec. 81. The fund may be used for the necessary expenses of conducting the district, including the operation and maintenance of all harbor or port improvements, works, utilities, appliances, facilities and vessels owned, controlled or operated by the district for the promotion and accommodation of commerce, navigation, fisheries, and recreation, or used in connection therewith, and for the purposes set forth in any grants in trust.

Sec. 82. The money in the fund may also be used for advertising the commercial and other advantages and facilities of any harbor in the district, and for encouraging and promoting commerce, navigation and transportation in and through such harbor.

Sec. 83. The money in the fund may also be used for the acquisition, construction, completion and maintenance of harbor and port improvements, works, utilities, appliances, facilities, and vessels, for the promotion and accommodation of commerce, navigation and fisheries, and recreation, or uses in connection therewith; and for extraordinary improvements and betterments to lands and property under the control, supervision and management of the district, including the purchase or condemnation of necessary lands and other property and property rights.

Sec. 84. The money in the fund may also be used for the payment of the principal, or interest, or both, of district bonds authorized, issued and sold pursuant to this act.

Sec. 85. The money in the fund may also be used for the payment of the principal or interest, or both, of the bonds of the county or any city in the district, for harbor improvements, authorized or outstanding prior to the establishment of the district, or thereafter issued and sold by such county or city for harbor improvements pursuant to this act.

Sec. 86. The port director may make application in writing to the board for a transfer of amounts from one appropriated item to another in the budget allowance. On the approval of the board by a two-thirds vote, the auditor shall make such transfer; but a transfer shall not be made except as herein provided, and in any event a transfer shall not be made from one bond improvement fund to another.

Sec. 87. (a) The tide and submerged lands conveyed to the district by any city included in the district shall be held by the district and its successors in trust and may be used for purposes in which there is a general statewide purpose, as follows:

(1) For the establishment, improvement and conduct of a harbor, and for the construction, reconstruction, repair, maintenance, and operation of wharves, docks, piers, slips, quays, and all other works, buildings, facilities, utilities, structures and appliances incidental, necessary or convenient, for the promotion and accommodation of commerce and navigation.

(2) For all commercial and industrial uses and purposes, and the construction, reconstruction, repair and maintenance of commercial and industrial buildings, plants and facilities.

(3) For the establishment, improvement and conduct of airport and heliport or aviation facilities, including but not limited to approach, takeoff and clear zones in connection with airport runways, and for the construction, reconstruction, repair, maintenance and operation of terminal buildings, runways, roadways, aprons, taxiways, parking areas, and all other works, buildings, facilities, utilities, structures and appliances incidental, necessary or convenient for the promotion and accommodation of air commerce and air navigation.

(4) For the construction, reconstruction, repair and maintenance of highways, streets, roadways, bridges, belt line railroads, parking facilities, power, telephone, telegraph or cable lines or landings, water and gas pipelines, and all other transportation and utility facilities or betterments incidental, necessary or convenient for the promotion and accommodation of any of the uses set forth in this section.

(5) For the construction, reconstruction, repair, maintenance and operation of public buildings, public assembly and meeting places, convention centers, parks, playgrounds, bathhouses and bathing facilities, recreation and fishing piers, public recreation facilities, including but not limited to public golf courses, and for all works, buildings, facilities, utilities, structures and appliances incidental, necessary or con-

venient for the promotion and accommodation of any such uses.

(6) For the establishment, improvement and conduct of small boat harbors, marinas, aquatic playgrounds and similar recreational facilities, and for the construction, reconstruction, repair, maintenance and operation of all works, buildings, facilities, utilities, structures and appliances incidental, necessary or convenient for the promotion and accommodation of any of such uses, including but not limited to snack bars, cafes, restaurants, motels, launching ramps and hoists, storage sheds, boat repair facilities with cranes and marine ways, administration buildings, public restrooms, bait and tackle shops, chandleries, boat sales establishments, service stations and fuel docks, yacht club buildings, parking areas, roadways, pedestrian ways and landscaped areas.

(b) The district or its successors shall not, at any time, grant, convey, give or alienate said lands, or any part thereof, to any individual, firm or corporation for any purposes whatever; provided, that said district, or its successors, may grant franchises thereon for limited periods, not exceeding 66 years, for wharves and other public uses and purposes, and may lease said lands, or any part thereof, for limited periods, not exceeding 66 years, for purposes consistent with the trusts upon which said lands are held by the State of California, and with the requirements of commerce and navigation, and collect and retain rents and other revenues from such leases, franchises and privileges. Such lease or leases, franchises and priv-

ileges may be for any and all purposes which shall not interefere with commerce and navigation.

(c) Said lands shall be improved without expense to the State; provided, however, that nothing contained in this section shall preclude expenditures for the development of said lands for any public purpose not inconsistent with commerce, navigation and fishery, by the State, or any board, agency or commission thereof, when authorized or approved by the district, nor by the district of any funds received for such purpose from the State or any board, agency or commission thereof.

(d) In the management, conduct, operation and control of said lands or any improvements, betterments, or structures thereon, the district or its successors shall make no discrimination in rates, tolls or charges for any use or service in connection therewith.

(e) The State of California shall have the right to use without charge any transportation, landing or storage improvements, betterments or structures constructed upon said lands for any vessel or other watercraft, aircraft, or railroad owned or operated by the State of California.

(f) There is hereby reserved to the people of the State of California the right to fish in the waters on said lands with the right of convenient access to said water over said lands for said purpose.

(g). There is hereby excepted and reserved in the State of California all deposits of minerals, including

oil and gas, in said lands, and to the State of California, or persons authorized by the State of California, the right to prospect for, mine, and remove such deposits from said lands.

(h) Said lands shall be held subject to the express reservation and condition that the State may at any time in the future use said lands or any portion for highway purposes without compensation to the district, its successors or assigns, or any person, firm or public or private corporation claiming under it, except that in the event improvements, betterments or structures have been placed upon the property taken by the State for said purposes, compensation shall be made to the person entitled thereto for the value of his interest in the improvements, betterments or structures taken or the damages to such interest.

(i) The State Lands Commission shall, at the cost of the district, survey and monument said lands and record a description and plat thereof in the office of the County Recorder of San Diego County.

(j) As to any tide and submerged lands conveyed to the district by the city which are subject to a condition contained in a grant of said lands to the city by the State that said lands shall be substantially improved within a designated period or else they shall revert to the State, such condition shall remain in effect as to said lands and shall be applicable to the district.

As to any tide and submerged lands conveyed to the district by a city which are not subject to such a con-

dition contained in a grant by the State and which have not heretofore been substantially improved, said lands, within 10 years from the effective date of this act, shall be substantially improved by the district without expense to the State. If the State Lands Commission determines that the district has failed to improve said lands as herein required, all right, title and interest of the district in and to said lands shall cease and said lands shall revert and rest in the State.

Approved May 8, 1962.

Filed May 9, 1962.

SAN DIEGO UNIFIED PORT DISTRICT

CHAPTER 673
Assembly Bill No. 2193

An act to amend Sections 18, 21, 22, 23, 24, 25, 27, 28, 29, 30, 31, 32, 33, 34, 41, 42, 43, 44, 45, 46, 47, 49.5, 51, 52, 53, 54, 57, 62, 66, 67, 71, 77, 80, 84, 86 and 87 of, and to repeal Sections 63, 64 and 65 of, and to add Sections 74 and 88 to the San Diego Unified Port District Act (Chapter 67 of the Statutes of 1962, First Extraordinary Session) [Harb. & Nav.C.App. 1, § 1 et seq.], relating to the San Diego Unified Port District, declaring the urgency thereof, to take effect immediately.

The people of the State of California do enact as follows:

Section 1. Section 18 of the San Diego Unified Port District Act (Chapter 67 of the Statutes of 1962, First Extraordinary Session) [Harb. & Nav.C.App. 1, § 18] is amended to read:

Sec. 18. Immediately after their appointment, the commissioners shall enter upon the performance of their duties. The board shall annually elect one of its members as chairman and another as vice chairman, and shall also elect annually a secretary, who may or may not be a member of the board. A majority shall constitute a quorum for the transaction of business. The board shall make rules and regulations for its own government and procedure, and shall hold at least one regular meeting each month, and may hold such special meetings as it may deem necessary.

The commissioners shall be officers of the district and shall receive no salaries but shall be entitled to

reimbursement for necessary traveling and other expenses incurred while engaged in the performance of their duties.

Sec. 2. Section 21 of said act [Harb. & Nav.C.App. 1, § 21] is amended to read:

Sec. 21. The board may pass all necessary ordinances and resolutions for the regulation of the district.

The enacting clause of all ordinances passed by the board shall be in substantially the following form:

"The Board of Port Commissioners of San Diego Unified Port District do ordain as follows:"

All ordinances and resolutions shall be signed by the chairman of the board and attested by the clerk.

All ordinances and resolutions shall be entered in the minutes. All ordinances passed by the board shall be published, within 15 days from the passage thereof, with the names of the members voting for and against them at least once in some daily newspaper of general circulation printed and published in the district.

Ordinances passed by the board shall not go into effect until the expiration of 30 days from their publication except ordinance ordering or otherwise relating to the following which shall take effect upon their publication:

(a) An election.

(b) The adoption of the annual budget.

(c) The bringing or conducting of suits or actions.

(d) The condemnation of private property for public use.

(e) The immediate preservation of the public peace, health or safety, which ordinance shall contain a specific statement showing its urgency and be passed by a two-thirds vote of the board.

A grant or franchise, lease, right or privilege shall never be construed to be an urgency measure.

All grants, franchises, leases, permits, rights or privileges for one year, or less, shall be made by the port director in accordance with such rules and regulations as the board shall prescribe by resolution and all grants, franchises, leases, permits, rights or privileges for more than one year shall be made by ordinance. Irrevocable permits shall not be granted or issued to any person.

Sec. 3. Section 22 of said act [Harb. & Nav.C.App. 1, § 22] is amended to read:

Sec. 22. The board may employ engineers, attorneys and any other officers and employees necessary in the work of the district. The port difector shall appoint a treasurer whose duty it shall be to receive and safely keep all moneys of the district. He shall comply with all provisions of law governing the deposit and securing of public funds. He shall pay out moneys only as authorized by the board and not otherwise; provided, however, that no authorization shall be necessary for the payment of principal and interest on bonds of the district. He shall at regular intervals, at least once each month, submit to the secretary of

the district a written report and accounting of all receipts and disbursements and fund balances, a copy of which report he shall file with the board.

The treasurer may appoint a deputy or deputies for whose acts he and his bondsmen shall be responsible. Such deputy or deputies shall hold office subject to the pleasure of the treasurer and shall receive such compensation as may be provided by the board. The treasurer shall execute a bond covering the faithful performance by him of the duties of his office and his duties with respect to all moneys coming into his hands as treasurer in such amount as shall be fixed by resolution of said board. The surety bond herein required shall be executed only by a surety company authorized to do business in the State of California and the premium therefor shall be paid by the district. The bond shall be approved by the board and filed with the secretary of the district. The treasurer before entering upon the duties of his office shall take and file with the secretary of the district the oath of office required by the Constitution of this State.

Sec. 4. Section 23 of said act [Harb. & Nav.C.App. 1, § 23] is amended to read:

Sec. 23. The district and the board may sue and be sued in all actions and proceedings in all courts and tribunals of competent jurisdiction.

The district may also bring an action to determine the validity of any of its bonds, warrants, contracts, obligations or evidences of indebtedness pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure.

Sec. 5. Section 24 of said act [Harb. & Nav.C.App. 1, § 24] is amended to read:

Sec. 24. The board may adopt a seal for the district and alter it at pleasure.

Sec. 6. Section 25 of said act [Harb. & Nav.C.App. 1, § 25] is amended to read:

Sec. 25. The district may take by grant, purchase, gift, devise, lease or otherwise acquire, hold and enjoy, and lease and dispose of real and personal property of every kind, within the district, necessary to the full or convenient exercise of its powers.

Sec. 7. Section 27 of said act [Harb. & Nav.C.App. 1, § 27] is amended to read:

Sec. 27. The district may exercise the right of eminent domain within the boundaries of the district in the manner provided by law for the condemnation of private property for public use and take any property necessary or convenient to the exercise of its powers. In the proceedings relative to the exercise of such right the district has the same rights, powers and privileges as a municipal corporation.

Sec. 8. Section 28 of said act [Harb. & Nav.C.App. 1, § 28] is amended to read:

Sec. 28. The district created in accordance with the provisions of this act is a public corporation created for the purposes set forth herein.

Sec. 9. Section 29 of said act [Harb. & Nav.C.App. 1, § 29] is amended to read:

Sec. 29. The district may issue bonds, borrow money and incur indebtedness as authorized by law or

in this act provided. The district may also refund any indebtedness as provided in this act or in any other applicable law, and may also refund, by the issuance of the same type of obligations as those refunded and following the same procedure as at that time may be applicable to the issuance of such obligations, and may retire any indebtedness or lien that may exist against the district or its property.

Sec. 10. Section 30 of said act [Harb. & Nav.C. App. 1, § 30] is amended to read:

Sec. 30. The board may regulate and control the anchoring, mooring, towing, and docking of all vessels.

The district may perform the functions of warehousemen, stevedores, lighterers, reconditioners, shippers and reshippers of properties of all kinds.

The board may manage the business of the district and promote the maritime and commercial interests by proper advertisement of its advantages and by the solicitation of business within or without the district, within other states or in foreign countries, through such employees or agencies as are expedient.

Within the boundaries of the district, the district may acquire, purchase, take over, construct, maintain, operate, develop, and regulate grain elevators, bunkering facilities, belt or other railroads, floating plants, lighterage, towage facilities, and any and all other facilities, aids, equipment, or property necessary for or incident to the development and operation of a harbor or for the accommodation and promotion of commerce, navigation, fisheries or recreation in the district.

Sec. 11. Section 31 of said act [Harb. & Nav.C. App. 1, § 31] is amended to read:

Sec. 31. As to any service which the district is authorized to perform pursuant to the provisions of this act, the district may contract for the performance of such service by the city within which the particular tidelands are located.

Sec. 12. Section 32 of said act [Harb. & Nav.C. App. 1, § 32] is amended to read:

Sec. 32. All district elections shall be held in accordance with the provisions of the Elections Code of the State of California, as the same now exist or may hereafter be amended, for the holding of elections in general law cities insofar as the same are not in conflict with this act.

Sec. 13. Section 33 of said act [Harb. & Nav.C. App. 1, § 33] is amended to read:

Sec. 33. The provisions of the Elections Code of the State of California, as the same now exist or may hereafter be amended, governing the initiative and the referendum in districts shall apply insofar as such provisions of the Elections Code are not in conflict with this act. Officers of the district shall not be subject to recall.

Sec. 14. Section 34 of said act [Harb. & Nav.C. App. 1, § 34] is amended to read:

Sec. 34. The board may, by resolution, order that any of the moneys in the funds under its control which are not necessary for current operating expenses be invested in any obligations, bonds or securities in which

a general law city could invest such funds; provided, however, that (1) any such investment shall be made in such a manner that the moneys in such funds will be available at the times and in the amounts necessary to accomplish the purpose for which said funds were established, and (2) no such investment shall be made in contravention of any provision or covenant in any proceedings for the authorization and issuance of bonds, notes, contracts or other evidences of indebtedness.

Sec. 15. Section 41 of said act [Harb. & Nav.C. App. 1, § 41] is amended to read:

Sec. 41. Notwithstanding any other provision of this act, the board may borrow money by issuance of negotiable promissory notes, or execute conditional sales contracts to purchase personal property, in an amount or of a value not exceeding in the aggregate at any one time the sum of two hundred thousand dollars ($200,000), for the purposes of the acquisition, construction, completion or repair of any or all improvements, works, property or facilities authorized by this act or necessary or convenient for the carrying out of the powers of the district.

Notwithstanding any other provision of this act, the board may borrow money, until June 30, 1967, by the issuance of negotiable promissory notes to provide working capital for the necessary expenses of conducting the district, provided that at the time of issuance of any such notes the aggregate amount of said notes outstanding and issued for such purpose shall

not exceed one-fourth of the annual budget for such expenses for the fiscal year (or portion thereof in the case of 1962-1963) in which such borrowing occurs.

Notwithstanding any other provision of this act, the board may borrow money, until June 30, 1967, by the issuance of negotiable promissory notes, to provide any or all sums required to be paid under any or all contracts of assumption mentioned in Section 67 of this act.

Negotiable promissory notes issued pursuant to this section shall mature in not exceeding five years from their respective dates and shall bear interest at a rate or rates not exceeding 6 percent per annum payable annually or semi-annually.

No conditional sales contract shall be for a term in excess of five years from the date of execution thereof.

The negotiable promissory notes and the conditional sales contracts shall contain such terms and provisions as the board shall specify in the ordinance providing for the issuance thereof. The negotiable promissory notes shall be signed in the same manner as general obligation bonds of the district and the conditional sales contracts shall be signed in the same manner as other contracts of the district.

As a condition precedent to the issuance of any negotiable promissory notes for the purposes of the acquisition, construction, completion or repair of any or all improvements, works, property or facilities authorized by this act or necessary or convenient for the carrying out of the powers of the district or the ex-

ecution of any conditional sales contract for such purposes, as provided in this section, in excess of twenty-five thousand dollars ($25,000), the board shall first unanimously approve by resolution and have on file a report approved by the port director on the engineering and economic feasibility relating to the project contemplated for the expenditure of said borrowed money or conditional sales contract. Said feasibility report shall be prepared and signed by an engineer or engineers licensed and registered under the laws of the State of California.

Taxes for the payment of all negotiable promissory notes or conditional sales contracts issued under this section shall be levied, collected, paid to the district and used in the same manner as is hereinafter provided for general obligation bonds of the district.

Sec. 16. Section 42 of said act [Harb. & Nav.C. App. 1, § 42] is amended to read:

Sec. 42. Whenever the board deems it necessary for the district to incur a general obligation bonded indebtedness for the acquisition, construction, completion or repair of any or all improvements, works, property or facilities, authorized by this act or necessary or convenient for the carrying out of the powers of the district, it shall, by ordinance, adopted by two-thirds of all members of the board, so declare and call an election to be held in said district for the purpose of submitting to the qualified voters thereof the proposition of incurring indebtedness by the issuance of general obligation bonds of said district. Said ordinance shall state:

(a) The purpose for which the proposed debt is to be incurred, which may include expenses of all proceedings for the authorization, issuance and sale of the bonds.

(b) The estimated cost of accomplishing said purpose.

(c) The amount of the principal of the indebtedness.

(d) The maximum term the bonds proposed to be issued shall run before maturity, which shall not exceed 40 years from the date thereof or the date of each series thereof.

(e) The maximum rate of interest to be paid, which shall not exceed 6 percent per annum.

(f) The proposition to be submitted to the voters.

(g) The date of the election.

(h) The manner of holding the election and the procedure for voting for or against the measure.

Notice of the holding of such election shall be given by publishing, pursuant to Section 6066 of the Government Code, the ordinance calling the election in at least one newspaper published in such district. No other notice of such election need be given. Except as otherwise provided in the ordinance, the election shall be conducted as other district elections.

If any proposition is defeated by the electors, the board shall not call another election on a substantially similar proposition to be held within six months after the prior election. If a petition requesting submission

of such a proposition, signed by 15 percent of the district electors, as shown by the votes cast for all candidates for Governor at the last election, is filed with the board, it may call an election before the expiration of six months.

If two-thirds of the electors voting on the proposition vote for it, then the board may, by resolution, at such time or times as it deems proper, issue bonds of the district for the whole or any part of the amount of the indebtedness so authorized and may from time to time, in such resolution or resolutions, provide for the issuance of such amounts as the necessity thereof may appear, until the full amount of such bonds authorized shall have been issued. Said full amount of bonds may be divided into two or more series and different dates and different dates of payment fixed for the bonds of each series. A bond need not mature on an anniversary of its date. The maximum term the bonds of any series shall run before maturity shall not exceed 40 years from the date of each series respectively. In such resolution or resolutions the board shall prescribe the form of the bonds and the form of any coupons to be attached thereto, the registration, conversion and exchange privileges, if any, pertaining thereto, and fix the time when the whole or any part of the principal shall become due and payable.

The bonds shall bear interest at a rate or rates not exceeding 6 percent per annum, payable semiannually, except that the first interest payable on the bonds or any series thereof may be for any period not exceeding one year as determined by the board. In the reso-

lution or resolutions providing for the issuance of such bonds the board may also provide for call and redemption of such bonds prior to maturity at such times and prices and upon such other terms as it may specify, provided that no bond shall be subject to call or redemption prior to maturity unless it contains a recital to that effect or unless a statement to that effect is printed thereon. The denomination or denominations of the bonds shall be stated in the resolution providing for their issuance, but shall not be less than one thousand dollars ($1,000). The principal of and interest on such bonds shall be payable in lawful money of the United States at the office of the treasurer of the district or at such other place or places as may be designated, or at either place or places at the option of the holders of the bonds. The bonds shall be dated, numbered consecutively and shall be signed by the chairman and treasurer, countersigned by the clerk and the official seal of the district attached. The interest coupons of such bonds shall be signed by the treasurer. All such signatures, countersignatures and seal may be printed, lithographed or mechanically reproduced, except that one of such signatures or countersignatures on the bonds shall be manually affixed. If any officer whose signature or countersignature appears on bonds or coupons ceases to be such officer before the delivery of the bonds, his signature is as effective as if he had remained in office.

The bonds may be sold as the board determines by resolution but for not less than par. Before selling the bonds, or any part thereof, the board shall give notice

inviting sealed bids in such manner as it may prescribe. If satisfactory bids are received the bonds offered for sale shall be awarded to the highest responsible bidder. If no bids are received or if the board determines that the bids received are not satisfactory as to price or responsibility of the bidders the board may reject all bids received, if any, and either readvertise or sell the bonds at private sale.

Delivery of any bonds may be made at any place either inside or outside the State, and the purchase price may be received in cash or bank credits.

All accrued interest received on the sale of bonds shall be placed in the fund to be used for the payment of principal of and interest on the bonds and the remainder of the proceeds of the bonds shall be placed in the treasury to the credit of the proper improvement fund and applied exclusively to the purpose for which the debt was incurred; provided, however, that when said purpose has been accomplished any moneys remaining in such improvement fund (a) shall be transferred to the fund to be used for the payment of principal of and interest on the bonds, or (b) shall be placed in a fund to be used for the purchase of outstanding bonds of the district. The bonds may be purchased only after publishing pursuant to Section 6066 of the Government Code in the district a notice inviting sealed proposals for the sale of bonds to the district. Such notice shall state the time and place when proposals will be opened and the amount of money available for the purchase of the bonds and the maximum price to be paid for said bonds so pur-

chased. Said notice may be published elsewhere in the United States in the discretion of the board. The board may reject any or all proposals and if it rejects all thereof, may within a period of 30 days thereafter purchase for cash any outstanding bonds of the district but in that event the purchase price shall not be more than the lowest purchase price at which bonds were tendered to the district in the public bidding. Any bonds so purchased shall be canceled immediately.

After the expiration of three years after a general obligation bond election the board may determine, by ordinance adopted by two-thirds of all the members of the board, that any or all of the bonds authorized at said election remaining unsold shall not be issued or sold. When the ordinance takes effect, the authorization to issue said bonds shall become void.

Whenever the board deems that the expenditure of money for the purpose for which the bonds were authorized by the voters is impractical or unwise, it may, by ordinance adopted by two-thirds of all members of the board, so declare and call an election to be held in the district for the purpose of submitting to the qualified voters thereof the proposition of incurring indebtedness by the issuance of such bonds for some other purpose. The procedure, so far as applicable, shall be the same as when a bond proposition is originally submitted.

The board may provide for the issuance, sale or exchange of refunding bonds to redeem or retire any bonds issued by the district upon the terms, at the times and in the manner which it determines. Refund-

ing bonds may be issued in a principal amount sufficient to pay all or any part of the principal of such outstanding bonds, the interest thereon and the premiums, if any, due upon call and redemption thereof prior to maturity and all expenses of such refunding. The provisions for this section for authorization, issuance and sale of bonds shall apply to the authorization, issuance and sale of such refunding bonds; except that when refunding bonds are to be exchanged for outstanding bonds the method of exchange shall be as determined by the board.

The district shall not incur a general obligation bonded indebtedness which in the aggregate exceeds 15 percent of the assessed value of all real and personal property in the district.

Sec. 17. Section 43 of said act [Harb. & Nav.C. App. 1, § 43] is amended to read:

Sec. 43. All bonds issued pursuant to Section 42 of this act are general obligations of the district and at the time of making the general tax levy after the incurring of any such bonded indebtedness, and annually thereafter until the bonds are paid or until there is a sum in the treasury of the district set apart for that purpose sufficient to meet all payments of principal and interest on the bonds as they become due, the board must cause a tax to be levied and collected annually, as hereinafter provided in Sections 44 and 45 of this act, sufficient to pay the interest on the bonds and such part of the principal as will become due before the proceeds of a tax levied at the next general tax levy will be available.

Sec. 18. Section 44 of said act [Harb. & Nav.C. App. 1, § 44] is amended to read:

Sec. 44. The board shall, at least 30 days before the board of supervisors is required by law to fix the general tax levy, certify to the board of supervisors in writing the minimum amount of money required to be raised by taxation during the fiscal year for the payment of the principal of and interest on any general obligation bonded debt of the district that will become due before the proceeds of a tax levied at the next general tax levy will be available. To the extent that, pursuant to this act or otherwise, moneys are on hand and have been set aside in the proper special fund for the purpose of paying such principal and interest, the amount of money required to be raised by taxation during the fiscal year may be reduced and if all of the moneys required to be raised by such annual tax levy are actually on hand and have been set aside in said fund for said purpose from some such other source, the tax levy hereinbefore required for such year need not be made.

Sec. 19. Section 45 of said act [Harb. & Nav.C. App. 1, § 45] is amended to read:

Sec. 45. The taxes required to be levied by Sections 43 and 44 of this act shall be levied upon all property within the district taxable for county purposes and shall be in addition to any and all other taxes levied by the board of supervisors and it shall be the duty of the officer, officers or body having authority to levy taxes within the county to levy the taxes so required. It shall be the duty of all county

or other officers charged with the duty of collecting taxes to collect such taxes in the time, form and manner as county taxes are collected and when collected to pay the same to the district. All such taxes shall be of the same force and effect as taxes levied for county purposes and their collection may be enforced by the same means as provided for the collection of county taxes. Such taxes shall be used only for the payment of the bonds and interest thereon.

Sec. 20. Section 46 of said act [Harb. & Nav.C. App. 1, § 46] is amended to read:

Sec. 46. On or before the 15th day of June of each year, the district board shall estimate and determine the amount of money required by the district and shall adopt a preliminary budget which shall be divided into the following main classes:

(1) Ordinary annual expenses.

(2) Capital outlay and Capital Outlay Fund.

(3) Prior indebtedness.

Sec. 21. Section 47 of said act [Harb. & Nav.C. App. 1, § 47] is amended to read:

Sec. 47. On or before the 15th day of June of each year, the board shall publish a notice pursuant to Section 6061 of the Government Code in the district stating:

(1) That the preliminary budget has been adopted and is available at a time and at a place within the district specified in the notice for inspection by interested taxpayers.

(2) That on a specified date not less than one month after the publication of the notice and at a specified time and place, the district board will meet for the purposes of fixing the final budget, and that any taxpayer may appear and be heard regarding the increase, decrease or omission of any item in the budget, or for the inclusion of additional items.

Sec. 22. Section 49.5 of said act [Harb. & Nav.C. App. 1, § 49.5] is amended to read:

Sec. 49.5. The board of supervisors shall at the time of levying the county taxes levy the taxes required by other sections of this act and also a tax upon all the taxable property within the district sufficient to meet the amounts set forth in the final budget submitted by the district board. The money when collected by the tax collector of the county shall be paid to the treasurer of said district; provided further, that any levy for capital outlay or for Capital Outlay Fund shall not exceed three cents ($0.03) per hundred dollars ($100) assessed valuation of all real and personal property in the district.

Sec. 23. Section 51 of said act [Harb. & Nav.C. App. 1, § 51] is amended to read:

Sec. 51. Whenever the board deems it necessary for the district to incur a revenue bonded indebtedness for the acquisition, construction, completion or repair of any or all improvements, works, property or facilities authorized by this act or necessary or convenient for the carrying out of the powers of the district, the board shall issue such revenue bonds in

accordance with the provisions of the Revenue Bond Law of 1941, as the same now exists or may hereafter be amended; provided, however, that:

(a) By ordinance adopted by two-thirds of all the members of the board and subject to referendum, the board may provide for the issuance of such bonds, and, unless said ordinance is subjected to referendum, no election shall be required to authorize the issuance of the bonds. A petition protesting against the adoption of such ordinance shall be signed by voters of the district equal in number of at least 5 percent of the entire vote cast within the district for all candidates for Governor at the last gubernatorial election.

(b) The aggregate amount of revenue bonds outstanding at any one time which have not been authorized or approved at an election shall not exceed ten million dollars ($10,000,000).

(c) Any provisions of the Revenue Bond Law of 1941 which are inconsistent with the provisions of this act shall not be applicable.

Sec. 24. Section 52 of said act [Harb. & Nav.C. App. 1, § 52] is amended to read:

Sec. 52. The accounts of the district shall be audited annually in accordance with generally accepted auditing standards by independent certified public accountants and a copy of the audit report shall be filed with the clerk for inspection by any person or persons interested.

Sec. 25. Section 53 of said act [Harb. & Nav.C. App. 1, § 53] is amended to read:

Sec. 53. Any territory annexed in accordance with law to a city specified in this act shall, upon the completion of such annexation proceedings, be deemed incorporated into and annexed to the district. In addition to the annexation of territory to the district as a result of it being annexed to such a city, there may be annexed to the district any of the following territory which is in the same county as the district:

a. Any territory contiguous to the district.

b. Any territory, any point of which touches the district.

c. Any territory separated from the district by a "separating barrier," which term includes a street, road, highway, railway line, railway crossing, railway right-of-way, watercourse, lagoon, or other natural barrier.

Any territory specified in this section may consist of one or more separate parcels of land, but it is not necessary that all parcels shall constitute in the aggregate one tract of land.

Sec. 26. Section 54 of said act [Harb. & Nav.C. App. 1, § 54] is amended to read:

Sec. 54. Any territory specified in subdivision a, b or c of Section 53 may be annexed in the manner provided for sanitary districts in the Health and Safety Code. The alteration of boundaries shall be ordered by the board of supervisors of the county in which the property is located.

Sec. 27. Section 57 of said act [Harb. & Nav.C. App. 1, § 57] is amended to read:

Sec. 57. The board may acquire, construct, erect, maintain or operate within the district, all improvements, utilities, appliances or facilities which are necessary or convenient for the promotion and accommodation of commerce, navigation, fisheries, and recreation, or their use in connection therewith upon the lands and waters under the control and management of the board, and it may acquire, maintain and operate facilities of all kinds within the district.

Sec. 28. Section 62 of said act [Harb. & Nav.C. App. 1, § 62] is amended to read:

Sec. 62. The district may contribute money to the federal or the state government or to the county in which it is located or to any city within the district, for the purpose of defraying the whole or a portion of the cost and expneses of work and improvement to be performed, either within or without the territorial limits of the district, by the federal, state, county or city government, in improving rivers, streams, or in doing other work, when such work will improve navigation and commerce, in or to the navigable waters in the district.

Sec. 29. Section 63 of said act [Harb. & Nav.C. App. 1, § 63] is repealed.

Sec. 30. Section 64 of said act [Harb. & Nav.C. App. 1, § 64] is repealed.

Sec. 31. Section 65 of said act [Harb. & Nav.C. App. 1, § 65] is repealed.

Sec. 32. Section 66 of said act [Harb. & Nav.C. App. 1, § 66] is amended to read:

Sec. 66. Notwithstanding any other provisions of this act or any other law, the provisions of all ordinances, resolutions and other proceedings in the issuance by the district of any general obligation bonds, general obligation bonds with a pledge of revenues, revenue bonds, negotiable promissory notes, or any and all evidences of indebtedness or liability shall constitute a contract between the district and the holders of such bonds, notes or evidences of indebtedness or liability and the provisions thereof and the provisions of this act shall be enforceable against the district, any or all of its successors or assigns, by mandamus or any other appropriate suit, action or proceeding in law or in equity in any court of competent jurisdiction. Nothing contained in this act or in any other law shall be held to relieve the district or the territory included within it from any bonded or other debt or liability contracted by the district. Upon dissolution of the district or upon withdrawal of territory therefrom, the property formerly included within the district or withdrawn therefrom shall continue to be liable for the payment of all bonded and other indebtedness or liabilities outstanding at the time of such dissolution or withdrawal the same as if the district had not been so dissolved or the territory withdrawn therefrom, and it shall be the duty of the successors or assigns to provide for the payment of such bonded and oth r indebtedness and liabilities. Except as may be otherwise provided in the proceedings for the authorization, issuance and sale of any revenue bonds or general obligation bonds secured by a pledge of reve-

nues, revenues of any kind or nature derived from any revenue producing improvements, works, facilities or property owned, operated or controlled by the district shall be pledged, charged, assigned and have a lien thereon for the payment of such bonds as long as the same are outstanding, regardless of any change in ownership, operation or control of such revenue-producing improvements, works, facilities or property and it shall, in such later event or events, be the duty of the successors or assigns to continue to maintain and operate such revenue-producing improvements, works, facilities or property as long as such bonds are outstanding.

Sec. 33. Section 67 of said act [Harb. & Nav.C. App. 1, § 67] is amended to read:

Sec. 67. The district shall take over and assume indebtedness incurred for development of tide and submerged lands of the county or any city specified in this act which shall have heretofore issued bonds or created any indebtedness for harbor development or improvement in the Bay of San Diego in the manner and with the effect set forth in the following entitled contracts:

(1) Assumption Agreement, between San Diego Unified Port District and the City of San Diego, dated February 14, 1963, Port Clerk Document No. 72.

(2) Assumption Agreement, between San Diego Unified Port District and the City of Chula Vista, dated February 26, 1963, Port Clerk Document No. 101.

and the district, the board and any other public agencies, boards, councils and officers mentioned in such contracts shall take all acts and proceedings necessary to carry into effect the provisions of said contract. Said contracts are hereby confirmed, validated and declared legally effective, including, without limitation, all acts and proceedings of the parties thereto done or taken with respect to said contracts prior to the date thereof. The provisions of this section shall operate to supply such legislative authorization as may be necessary to confirm, validate and make legally effective any such contracts and the proceedings taken in connection therewith prior to the date thereof which the Legislature could have supplied or provided for in the law under which such acts or proceedings were taken.

Sec. 34. Section 71 of said act [Harb. & Nav.C. App. 1, § 71] is amended to read:

Sec. 71. Upon the establishment of the district, all persons then occupying the several offices of or under the government, of the county and each of the cities included therein, except as otherwise provided, whose several powers and duties are within the powers of the district or within the powers or duties of the several officers thereof, shall immediately quit and surrender the occupancy or possession of such offices which shall thereupon cease and determine, except as to any persons who have powers and perform duties for the county and the cities other than those mentioned, whose offices shall not cease and determine as to such other powers and duties but shall continue

with respect thereto the same as if the district had not been established.

Notwithstanding the provisions contained in this section, all employees of the county and any city performing duties in connection with the Port of San Diego or the respective harbor departments, shall be blanketed in as employees of the district; and the district is empowered to: (a) contract with the State Employees' Retirement System and may provide retirement and disability benefits for employees under the State Employees' Retirement System pursuant to its rules and regulations, or (b) contract with any city included within the district which has a retirement system for retirement and disability benefits for district employees. The district may, by contract, continue such employees of the district so blanketed in as members of the retirement system of which they were members while they were employees of the respective cities.

Sec. 35. Section 74 is added to said act [Harb. & Nav.C.App. 1, § 74], to read:

Sec. 74. Bonds, notes and other evidences of indebtedness issued or incurred by the district shall be signed as provided in the section of this act applicable thereto or as provided in any other law applicable thereto; provided, however, that if the particular section or law does not prescribe the method of such execution, the method provided for general obligation bonds of the district shall apply so far as applicable. All other contracts of the district shall be executed in such manner as the board may fix by resolution.

Sec. 36. Section 77 of said act [Harb. & Nav.C. App. 1, § 77] is amended to read:

Sec. 77. The salaries or wages of all officers and employees of the district shall be paid at such regular periods as the board by ordinance may determine.

Sec. 37. Section 80 of said act [Harb. & Nav.C. App. 1, § 80] is amended to read:

Sec. 80. All money received or collected from or arising out of the use or operation of any harbor or port improvement, work, appliance, facility or utility, or vessel, owned, controlled or operated by the district; all tolls, charges and rentals collected by the board, and all compensations or fees required to be paid for franchises or licenses, or otherwise by law or ordinance or order, to the district for the operation of any public service utility upon lands or waters under the control and management of the board, shall be deposited in the treasury of the district to the credit of a fund to be known as the San Diego Unified Port District Revenue Fund. The money in or belonging to the fund shall not be appropriated or used for any purpose except those enumerated in this act and such enumeration shall not be deemed to create any priority of one use or purpose over another.

Sec. 38. Section 84 of said act [Harb. & Nav.C. App. 1, § 84] is amended to read:

Sec. 84. The money in the fund may also be used for the payment of the principal, or interest, or both, of district bonds authorized, issued and sold pursuant to this act and for the establishment and maintenance of bond service funds, sinking funds, reserve funds or

other funds or accounts established to secure the payment of principal of, interest on, or redemption of or for the security of such bonds.

Sec. 39. Section 86 of said act [Harb. & Nav.C. App. 1, § 86] is amended to read:

Sec. 86. The port director may make application in writing to the board for a transfer of amounts from one appropriated item to another in the budget allowance. On the approval of the board by a two-thirds vote, the auditor shall make such transfer; but a transfer shall not be made except as herein provided. Any transfer of bond or note proceeds or of bond or note service, reserve or sinking funds shall be made only as provided in the proceedings authorizing the issuance of such bonds.

Sec. 40. Section 87 of said act [Harb. & Nav.C. App. 1, § 87] is amended to read:

Sec. 87. (a) The tide and submerged lands conveyed to the district by any city included in the district shall be held by the district and its successors in trust and may be used for purposes in which there is a general statewide purpose, as follows:

(1) For the establishment, improvement and conduct of a harbor, and for the construction, reconstruction, repair, maintenance, and operation of wharves, docks, piers, slips, quays, and all other works, buildings, facilities, utilities, structures and appliances incidental, necessary or convenient, for the promotion and accommodation of commerce and navigation.

(2) For all commercial and industrial uses and purposes, and the construction, reconstruction, repair

and maintenance of commercial and industrial buildings, plants and facilities.

(3) For the establishment, improvement and conduct of airport and heliport or aviation facilities, including but not limited to approach, takeoff and clear zones in connection with airport runways, and for the construction, reconstruction, repair, maintenance and operation of terminal buildings, runways, roadways, aprons, taxiways, parking areas, and all other works, buildings, facilities, utilities, structures and appliances incidental, necessary or convenient for the promotion and accommodation of air commerce and air navigation.

(4) For the construction, reconstruction, repair and maintenance of highways, streets, roadways, bridges, belt line railroads, parking facilities, power, telephone, telegraph or cable lines or landings, water and gas piplines, and all other transportation and utility facilities or betterments incidental, necessary or convenient for the promotion and accommodation of any of the uses set forth in this section.

(5) For the construction, reconstruction, repair, maintenance and operation of public buildings, public assembly and meeting places, convention centers, parks, playgrounds, bathhouses and bathing facilities, recreation and fishing piers, public recreation facilities, including but not limited to public golf courses, and for all works, buildings, facilities, utilities, structures and appliances incidental, necessary or convenient for the promotion and accommodation of any such uses.

(6) For the establishment, improvement and conduct of small boat harbors, marinas, aquatic playgrounds and similar recreational facilities, and for the construction, reconstruction, repair, maintenance and operation of all works, buildings, facilities, utilities, structures and appliances incidental, necessary or convenient for the promotion and accommodation of any of such uses, including but not limited to snack bars, cafes, restaurants, motels, launching ramps and hoists, storage sheds, boat repair facilities with cranes and marine ways, administration buildings, public restrooms, bait and tackle shops, chandleries, boat sales establishments, service stations and fuel docks, yacht club buildings, parking areas, roadways, pedestrian ways and landscaped areas.

(b) The district or its successors shall not, at any time, grant, convey, give or alienate said lands, or any part thereof, to any individual, firm or corporation for any purposes whatever; provided, that said district, or its successors, may grant franchises thereon for limited periods, not exceeding 66 years, for wharves and other public uses and purposes, and may lease said lands, or any part thereof, for limited periods, not exceeding 66 years, for purposes consistent with the trusts upon which said lands are held by the State of California, and with the requirements of commerce and navigation, and collect and retain rents and other revenues from such leases, franchises and privileges. Such lease or leases, franchises and privileges may be for any and all purposes which shall not interfere with commerce and navigation.

(c) Said lands shall be improved without expense to the State; provided, however, that nothing contained in this section shall preclude expenditures for the development of said lands for any public purpose not inconsistent with commerce, navigation and fishery, by the State, or any board, agency or commission thereof, when authorized or approved by the district, nor by the district of any funds received for such purpose from the State or any board, agency or commission thereof.

(d) In the management, conduct, operation and control of said lands or any improvements, betterments, or structures thereon, the district or its successors shall make no discrimination in rates, tolls or charges for any use or service in connection therewith.

(e) The State of California shall have the right to use without charge any transportation, landing or storage improvements, betterments or structures constructed upon said lands for any vessel or other watercraft, aircraft, or railroad owned or operated by the State of California.

(f) There is hereby reserved to the people of the State of California the right to fish in the waters on said lands with the right of convenient access to said water over said lands for said purpose.

(g) There is hereby excepted and reserved in the State of California all deposits of minerals, including oil and gas, in said lands, and to the State of California, or persons authorized by the State of Cali-

fornia, the right to prospect for, mine, and remove such deposits from said lands.

(h) Said lands shall be held subject to the express reservation and condition that the State may at any time in the future use said lands or any portion for highway purposes without compensation to the district, its successors or assigns, or any person, firm or public or private corporation claiming under it, except that in the event improvements, betterments or structures have been placed upon the property taken by the State for said purposes, compensation shall be made to the district, its successors or assigns, or any person, firm or public or private corporation entitled thereto for the value of his or its interest in the improvements, betterments or structures taken or the damages to such interest.

(i) The State Lands Commission shall, at the cost of the district, survey and monument said lands and record a description and plat thereof in the office of the County Recorder of San Diego County.

(j) As to any tide and submerged lands conveyed to the district by a city which are subject to a condition contained in a grant of said lands to the city by the State that said lands shall be substantially improved within a designated period or else they shall revert to the State, such condition shall remain in effect as to said lands and shall be applicable to the district.

As to any tide and submerged lands conveyed to the district by a city which are not subject to such a con-

dition contained in a grant by the State and which have not heretofore been substantially improved, said lands within 10 years from the effective date of this act, shall be substantially improved by the district without expense to the State. If the State Lands Commission determines that the district has failed to improve said lands as herein required, all right, title and interest of the district in and to said lands shall cease and said lands shall revert and rest in the State.

Sec. 41. Section 88 is added to said act [Harb. & Nav.C.App. 1, § 88], to read:

Sec. 88. If any section, subdivision, sentence, clause, or phrase of this act, or the application thereof to any person or circumstances, is for any reason held invalid, the validity of the remainder of the act, or the application of such provision to other persons or circumstances, shall not be affected thereby. The Legislature hereby declares that it would have passed this act, and each section, subdivision, sentence, clause, and phrase thereof, irrespective of the fact that one or more sections, subdivisions, sentences, clauses or phrases, or the application thereof to any person or circumstance, be held invalid.

Approved and filed May 31, 1963.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. .....

CITY OF CORONADO and R. J. TOWNSEND, a taxpayer,
Appellants,

vs.

THE SAN DIEGO UNIFIED PORT DISTRICT; MILES BOWLER, B. F. COGGAN, JAMES GLASGOW, C. A. LARSEN, D. D. MCELFRESH, LARRY RUEHLE and DOE I, as port commissioners acting as the Board of Commissioners of the San Diego Unified Port District; THE STATE OF CALIFORNIA, Defendant pursuant to Section 6308 of the Public Resources Code of the State of California, et al.,
Appellees.

On appeal from the District Court of Appeal of the State of California, Fourth Appellate District

MOTION OF APPELLEE THE STATE OF ALIFORNIA TO DISMISS APPEAL

Appellee The State of California, a defendant herein pursuant to the provisions of Section 6308 of the Public

Resources Code of the State of California,* moves to dismiss the appeal in this case upon the ground that it does not present a substantial federal question.

The facts upon which this motion is based are set out in the motion of appellees The San Diego Port District and its Port Commissioners to dismiss the appeal herein and in their brief submitted in support thereof. Appellee The State of California authorized appellees The San Diego Port District and its Port Commissioners to state that the State of California joined in their motion to dismiss the appeal herein and said appellee The State of

*Section 6308. Whenever an action or proceeding is commenced against a county, city, or other political subdivision or agency of the State involving the title to or the boundaries of tidelands or submerged lands that have been or may hereafter be granted to it in trust by the Legislature, the State of California shall be joined as a necessary party defendant in such action or proceeding. Service of summons shall be made upon the chairman of the State Lands Commission and upon the Attorney General, and the Attorney General shall represent the State in all such actions or proceedings. If judgment is given against the State in any such action or proceeding, no costs can be recovered from the State thereunder. (Added Stats. 1951, c. 977, p. 2610, §1; later amended by Stats. 1963, c. 1425, p. 2967, §1.)

California now concurs in said statement of facts and said brief and submits such statement and authority in support of its motion to dismiss the appeal herein.

Respectfully submitted,

THOMAS C. LYNCH,
Attorney General of California,
ARIEL C. HILTON,
Deputy Attorney General,
Attorneys for Appellee
State of California.

Dated: January 8, 1965.

SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
JAN 11 1965
JOHN F. DAVIS, CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 763

CITY OF CORONADO and R. J. TOWNSEND, a taxpayer,

Appellants,

vs.

THE SAN DIEGO UNIFIED PORT DISTRICT; MILES BOWLER, B. F. COGGAN, JAMES GLASGOW, C. A. LARSEN, D. D. MCELFRESH, LARRY RUEHLE and DOE I, as port commissioners acting as the Board of Commissioners of the San Diego Unified Port District; THE STATE OF CALIFORNIA, Defendant pursuant to Section 6308 of the Public Resources Code of the State of California; et al.,

Appellees.

On Appeal from the District Court of Appeal of the State of California, Fourth Appellate District

Motion of Appellees The San Diego Unified Port District and Its Port Commissioners to Dismiss Appeal

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Appellees.

On Appeal from the District Court of Appeal of the State of California, Fourth Appellate District

Motion of Appellees The San Diego Unified Port District and Its Port Commissioners to Dismiss Appeal

Appellees The San Diego Unified Port District and its Port Commissioners move to dismiss this appeal upon the ground that it does not present a substantial federal question.

The motion is based upon these facts. (1) The questions presented have been decided by this Court, against appellants, recently and long ago. (2) The election scheme complained of accorded the voters of appellant Coronado five times the weight it accorded San Diego's voters, in comparison with whom appellants assert the scheme treated them unfairly. (3) The establishment of the District, which appellants attack, was overwhelmingly approved by the voters in the area concerned. (4) Neither the District's establishment or its operation has deprived either appellant of anything.

The State of California has authorized us to state that it joins in this motion.

Respectfully submitted,

AARON W. REESE
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By BURNHAM ENERSEN
Counsel for Appellees
The San Diego Unified
Port District and its
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PROOF OF SERVICE

I, BURNHAM ENERSEN, one of the attorneys for appellees SAN DIEGO UNIFIED PORT DISTRICT, MILES BOWLER, B. F. COGGAN, JAMES GLASGOW, C. A. LARSEN, D. D. MCELFRESH and LARRY RUEHLE, and a member of the Bar of the Supreme Court of the United States, certify that on the 7th day of January, 1965, I served copies of the foregoing Motion of Appellees San Diego Unified Port District and its Port Commissioners to Dismiss Appeal on the several parties as follows:

1. On appellants CITY OF CORONADO and R. J. TOWNSEND, by depositing a copy in a United States Post Office Box at San Francisco, California, with first-class postage prepaid, to their attorneys of record as follows:

(a) John R. Goodbody, Esq.
City Attorney
Coronado, California

(b) George A. Blackstone
Caspar W. Weinberger
M. Laurence Popofsky
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Brief of Appellees The San Diego Unified Port District and Its Port Commissioners in Support of Their Motion to Dismiss Appeal

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Appellees.

On Appeal from the District Court of Appeal of the State of California, Fourth Appellate District

Brief of Appellees The San Diego Unified Port District and Its Port Commissioners in Support of Their Motion to Dismiss Appeal

Appellees The San Diego Unified Port District and its Port Commissioners move to dismiss the appeal in this case upon the ground that it does not present a substantial federal question, and in support of their motion submit this brief.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

In addition to the Statute appellants cite as "involved" (Jur. Stmt. p. 5),* this appeal involves the Fourteenth Amendment to the United States Constitution. See Sup. Ct. Rule 40 (1)(c). The Amendment is printed at U.S.C.A., Constitution, Amendment 14, and provides in relevant part:

> "... No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

QUESTIONS PRESENTED†

(a) A California statute authorized the voters in the five cities surrounding San Diego Bay to establish a harbor district to hold and operate the tidelands held by each of the cities as trustee for the benefit of all the people of California. The statute provided the district would be established if (1) a majority of voters in the City of San Diego, having 84% of the population of all five cities, and (2) a majority of voters in the other four cities, including Coronado, combined, voted to establish it. Does the statute treat Coronado voters, whose votes it accords five times the weight it accords San Diego's, unfairly as compared with San Diego voters?

(b) The same statute required those cities to transfer the tidelands held by them as trustees, with developments

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*Appellants' Jurisdictional Statement will sometimes be referred to as "Jur. Stmt."

†Appellants have stated the questions presented by this Appeal without reference to the facts presented by it. See Jur. Stmt., pp. 4-5. Accordingly, appellees have undertaken to state those questions. See Sup. Ct. Rule 40(3).

made upon them, to the district upon its establishment. It also required the district to assume the bonded indebtedness each city had incurred in developing the tidelands. The vast majority of voters in the Bay Area voted for, but the majority of voters in Coronado voted against, establishment. Does the district's assumption of that bonded indebtedness deprive either appellant of anything, and, if so, does it deprive either of anything without due process of law?

STATEMENT OF THE CASE

The San Diego-Bay Area is fragmented into a number of separate cities, San Diego, Chula Vista, Coronado, National City and Imperial Beach. Prior to 1962, each of those five cities, except Imperial Beach, was acting as trustee of State tidelands which had been granted to it by the State of California to hold in trust for the benefit of all of the people of the State. See 1911 Calif. Stats., Ch. 700 (grant to San Diego); 1959 Calif. Stats., Ch. 706 (grant to Chula Vista); 1923 Calif. Stats., Ch. 49, p. 86 (grant to Coronado); 1947 Calif. Stats., Ch. 183 (grant to National City). The unified development of the Bay Area port and harbor facilities and adjacent tidelands would have been impossible at that time without the coordinated action of all five of the cities. In order to solve the unique problems thus presented and to facilitate development of the harbor for multiple purpose use, the California Legislature in 1962 enacted the San Diego Unified Port District Act,* § 2 of which states:

> "It is hereby declared to be the policy of the State of California to develop the harbors and ports of this State for multiple purpose use for the benefit of the

*The San Diego Unified Port District Act (1962 Calif. Stats., 1 St. Ex. Sess. Chap. 67), will sometimes be referred to as "Chapter 67" or "Ch. 67". The Act appears at Appendix B to Appellants' Jurisdictional Statement.

> people. A necessity exists within San Diego County for such development. Because of the several separate cities and unincorporated populated areas in the area . . . only a specially created district can operate effectively in developing the harbor and port facilities. Because of the unique problems presented by this area, and the facts and circumstances relative to the development of harbor and port facilities, the adoption of a special act and the creation of a special district is required."

Chapter 67 provided that the question whether the San Diego Unified Port District should be established should be submitted to the voters in the cities surrounding the Bay. The vote was to be conducted in two parts, one part composed of the City of San Diego, which has 84% of the population of the Bay Area, and the other part composed of Coronado and the remaining cities combined, which have 16% of that population.* The district could not be established without the affirmative vote of both parts.

The people voted upon the issue on November 6, 1962, and an overwhelming number of them, 69% in San Diego, 57% in the remaining cities, and 67% of the total, voted "yes". Coronado's voters, whose votes comprised about 2% of the total district vote, recorded a negative majority, but the number of the Coronado "no" votes comprised only about 1.5% of the total vote.†

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*A table indicating the pertinent population figures according to the 1960 census is reproduced at p. 7, *infra*. Since California courts may take judicial notice of census figures, see Calif. Code Civ. Pro. § 1875(3), (9); 18 Cal. Jur. 2d, *Evidence*, § 43, p. 464, they are within the judicial notice of this Court upon this appeal. *Adam v. Saenger*, 303 U.S. 59, 63 (1938); *Hanley v. Donoghue*, 116 U.S. 1, 6-7 (1885); 29 Yale L. J. 460 (1920).

†The official returns of the election are before the Court in the form of an excerpt from the December 18, 1962, minutes of the

In accordance with the people's mandate and the provisions of Chapter 67, on December 18, 1962, the District was formally established. See Appendix A, p. 3. Upon its establishment, the statute required each of the cities to convey to it the tidelands each held in trust, together with any developments made upon them, and also required the District to assume the bonded indebtedness each had incurred in developing them. Ch. 67, § 14, § 67. Some of the developments were substantial. San Diego, for example, had built a harbor and an airport upon its tidelands, and the value of the assets San Diego transferred to the District exceeded the liabilities the District assumed from it by over thirty-two million dollars ($32,000,000).*

San Diego, Chula Vista and National City, the only cities around the Bay, besides Coronado, which had tidelands, have long since transferred them to the District.† None of

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Board of Supervisors of San Diego County. See Appendix A to this Brief. See also Appendix B, a summary of the returns. Those minutes, recording the official acts of the Board of Supervisors, are within the judicial notice of California courts, and therefore of this Court upon this appeal. Calif. Code Civ. Pro. § 1875(2), (3). *O'Neal v. Seabury*, 24 C.A. 2d 308, 74 P.2d 1082 (1938); *Chambers v. Ashley*, 33 C.A. 2d 390, 91 P.2d 932 (1939); p. 4, n, *supra*.

*See San Diego Unified Port District, Annual Financial Report for Fiscal Year Ending June 30, 1963, Ex. D, reproduced at Appendix C to this brief. The court may take judicial notice of the statistical reports of State agencies. Calif. Code Civ. Pro. § 1875(3); *Doyle v. Board of Barber Examiners*, 219 C.A. 2d 504, 516, 33 Cal. Rptr. 346 (1963). The court may also take judicial notice of the existence and location of the airport and harbor San Diego transferred to the district. *Times-Mirror Co. v. Superior Court*, 3 Cal. 2d 309, 333, 44 P.2d 547 (1935); *People v. Velarde*, 45 Cal. App. 520, 529, 188 Pac. 59 (1920).

†See San Diego Unified Port District, Annual Financial Report for Fiscal Year Ending June 30, 1963, Ex. D, reproduced at Appendix C to this brief.

those cities, including Coronado, has or ever had any beneficial interest whatever in those tidelands, because each held them only as trustee for the benefit of all of the people of the State of California. See *Mallon v. City of Long Beach*, 44 C.2d 199, 282 P.2d 481 (1955); Opinion, Appendix A, pp. 20-24, 31.* Despite that fact and the conclusive outcome of the election, Coronado has refused to give up possession of its tidelands. Instead, it and appellant taxpayer have made a number of attempts, all of them unsuccessful, to enjoin the establishment of the District and to enjoin it from operating. (Jur. Stmt., 7-8; Opinion, Appendix A, pp. 2-3, 5). This is the last appeal from the several successive judgments against them.

The District has now been in existence and operating for over two years. Its work is directly related to the economic development of the San Diego Bay Area. Its establishment has not deprived either appellant of anything, and the people of Coronado have recently (on November 3, 1964) demonstrated their enthusiasm and support for the District by voting in favor of three District bond issues by majorities of more than two-for-one.† It is time to lay the matter to rest.

ARGUMENT

This appeal presents two questions, neither of which is substantial. This Court has settled the first, an equal protection question, by its unbroken line of reapportionment decisions, starting with *Baker v. Carr*, 369 U.S. 186 (1962).

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*The opinion of the District Court of Appeal from which this appeal is taken is Appendix A to Appellants' Jurisdictional Statement. It will be cited as "Opinion, Appendix A, p. ".

†The returns of that election are before the Court in the form of a December 8 Resolution of the Board of Supervisors and a Certificate of the Registrar of Voters. See Appendix D.

This Court decided the second, a due process question, over fifty years ago. There is no reason to decide those questions again.

A. The "Equal Protection" Question: Appellants* Have Plainly Not Been Denied the Equal Protection of the Laws.

Section 11 of Chapter 67, which lays down the voting scheme pursuant to which the District was established, provides:

> "The count of the vote in the election shall be conducted in two parts. One part shall consist of those votes cast in the City of San Diego, and the other part shall consist of all those votes cast in the other four cities specified in Section 5 and outside territory."

The City of San Diego, which makes up the first "part" of voters empowered by Section 11 to veto formation of the district, has about 84% of the population of both parts combined; Coronado and the remaining cities, which as a unit make up the other part given the same veto power, have 16% of that population.† The statute therefore accords

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*Since a city "cannot invoke the protection of the Fourteenth Amendment against . . . [its] state," *Newark v. New Jersey*, 262 U.S. 192, 196 (1923); *Williams v. Eggleston*, 170 U.S. 304 (1898), it is clear that "no substantial federal question is presented" by the City of Coronado's Fourteenth Amendment claims. *Trenton v. New Jersey*, 262 U.S. 182, 192 (1923). Nevertheless, its claims will be treated with appellant taxpayer's; since his claims are without merit, *a fortiori* the city's are.

†The 1960 Census reports the following population figures:

	Population	% of Total
Chula Vista	42,034	6 %
National City	32,771	5 %
Coronado	18,039	2½%
Imperial Beach	17,773	2½%
	110,617	16 %
San Diego	573,224	84 %
	683,841	100 %

the votes of electors in Coronado and the other cities in the second "part" over five times the weight it accords the votes of San Diego electors. Nevertheless, appellants contend that Coronado voters were treated unfairly compared with San Diego voters.

Appellants' complaint is that San Diego voters, considered as a unit, were empowered to veto formation of the District, while Coronado voters, considered as a unit, were not. (Jur. Stmt. p. 10). If, they say, the 84% of the area's population living in San Diego can prevent the establishment of the District even though the remaining 16% of the population may vote for it, then the 2½% of the population living in Coronado is entitled to prevent the District's establishment even though the remaining 97½% of the area's population votes for it.* That contention is based upon the premise that the equal protection clause of the Fourteenth Amendment requires the vote of one city to count equally to the vote of another city, without reference to the number of voters residing in either. The recent reapportionment decisions of this Court, upon which appellants apparently rely (Jur. Stmt. pp. 12-13), make it crystal clear that the law is precisely to the contrary.

In *Baker v. Carr*, 369 U.S. 186 (1962), the Court held that a complaint which alleged that the scheme by which the Tennessee General Assembly was apportioned effected a "gross disproportion of representation to voting population" presented a justiciable federal question. 369 U.S. at 207. In *Gray v. Sanders*, 372 U.S. 368 (1963) (Jur. Stmt. p. 13),

*Appellants' assertion that Chapter 67 empowered San Diego "to remain independent of the unified port scheme" (Jur. Stmt. 11) is inaccurate; San Diego was empowered to veto the District's formation, not to stay independent of it if it were established. Of course Coronado is asking for the right to *veto* the District's formation, not the right to stay independent of it.

the Court held that the Georgia county unit system, which gave the votes of less populous counties greater weight than those of more populous counties, deprived voters in the more populous counties of equal protection. The Court stated:

> "The conception of political equality from the Declaration of Independence, to Lincoln's Gettysburg Address, to the Fifteenth, Seventeenth, and Nineteenth Amendments can mean only one thing—one person, one vote." Id., at 381.

In *Wesberry v. Sanders,* 376 U.S. 1 (1964), the Court held that a Georgia scheme according equal numbers of congressmen to districts varying in population by multiples of two and three deprived voters in the more populous districts of equal protection. The Court repeated the principle that elections must be conducted on the basis of "one person, one vote." And in *Reynolds v. Sims,* the Court held that both houses of a state legislature must be apportioned on the basis of "equal representation for equal numbers of people . . .," and that accordingly a plan alloting one senator per county, some varying substantially in population, was invalid. 377 U.S. 533, 560-61 (1964). The Court said, at p. 567:

> "The fact that an individual lives here or there is not a legitimate reason for over-weighting or diluting the efficacy of his vote . . . (T)he basic principle of representative government remains, and must remain, unchanged—the weight of a citizen's vote cannot be made to depend on where he lives."*

*The statement which appellants quote from *Gray v. Sanders, supra,* that "there is no indication in the Constitution that homesite or occupation affords a permissible basis for distinguishing between qualified voters within the state," (Jur. Stmt. p. 13) of course is opposed to their position. The language means what the language quoted from *Reynolds* means: the vote of a resident of one part of a State cannot be given weight greater than that of a resident of a different part.

Thus the Fourteenth Amendment requires the boundaries of cities and counties to be disregarded so that equal numbers of persons may be represented and have their votes counted with reasonable equality. See Opinion, Appendix A, pp. 26-27. Since Coronado has less than 1/30 of the number of people residing in San Diego, it was constitutionally entitled* to have its votes accorded less than 1/30 the weight accorded San Diego's votes. Since its votes were actually accorded five times the weight accorded to San Diego's—or 150 times what they were constitutionally required to be given—its equal protection claim is absurd.

Appellants argue, however, that the reapportionment cases require all voters to be treated "equally with respect to all attributes bearing upon the exercise of their franchise." (Jur. Stmt. 12). The attribute they have in mind is the attribute "city citizen". City citizens are not treated equally, the argument goes, if one city's votes upon an issue are counted as a unit and given the weight of, say, 100, unless each other city's votes upon the issue, regardless of the city's population, are counted as a unit and given the same weight of 100. The difficulty with that argument is that the reapportionment cases relied on to support it establish that the attribute of city citizen does *not* "bear upon the exercise of the franchise"; those cases require the boundaries of cities to be disregarded so that equal numbers of persons, not the cities in which they vote, may have their votes accorded reasonably equality.†

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*There is some doubt that the equal protection clause extends to State elections conducted at less than state-wide level. See *Johnson v. Genesee County, Mich.*, 232 F.Supp. 567 (E.D. Mich. 1964).

†Appellants' assertion that Coronado's residents voted as members of an electorate "bearing no relationship to their interests and obligations as citizens of Coronado," (Jur. Stmt., p. 10), is irrele-

The recent District Court case, *Dorsey v. Fortson*, 228 F. Supp. 259 (N.D. Ga. 1964), *prob. juris. noted*, 33 U.S.L. Week 3115 (U.S. Oct. 13, 1964), which appellants apparently believe has miraculously rescued them from the rules pronounced by this Court, is entirely irrelevant. *Dorsey* holds merely that when a state divides itself into senatorial districts *each having an equal population*, the equal numbers of people in each district, and not just some of the districts, must be given the right to elect their own representative. The Court said:

> "In sum, the Senate was apportioned to population. The State . . . divided the state into population districts. Having done so, and the circumstances as they relate to voters residing in each being the same; they are entitled to equal treatment." 228 F. Supp. at 264.

Dorsey does not hold that a state must give all its cities the same treatment without regard to differences between them; still less does it hold that the votes of unequal numbers of people residing in different cities must be accorded equal weight.

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vant because those interests are not and cannot be legally protected. "Political subdivisions of a state—counties, cities, or whatever—never were and never have been considered as sovereign entities. Rather, they have been traditionally regarded as subordinate governmental instrumentalities created by the state to assist in the carrying out of state governmental functions." *Reynolds v. Sims, supra*, at 575. Accordingly, the state may in its discretion extend or limit the boundaries of municipalities, "consolidate two or more into one, overrule their legislative action whenever it is deemed unwise, impolitic, or unjust, and even abolish them altogether . . . and substitute those in their place which are different." *Mt. Pleasant v. Beckwith*, 100 U.S. 514, 529 (1879); *Laramie County v. Albany County*, 92 U.S. 307, 312-13 (1875). See Opinion, Appendix A, pp. 27-28.

B. The "Due Process" Question: Chapter 67 Plainly Does Not Deprive Coronado's Residents of Property Without Due Process of Law.

The issues raised by Appellants' due process claim were decided against them over fifty years ago by this Court, *Hunter v. Pittsburgh*, 207 U.S. 161 (1907). In *Hunter* a Pennsylvania statute provided that Pittsburgh and Allegheny would be merged if a majority of voters voting in both cities, considered as a unit, voted for merger. The majority of voters in the two cities, considered as a unit, voted for merger, but the majority of voters in Allegheny, considered separately, voted against it. An Allegheny taxpayer brought suit to prevent the consolidation, alleging that Pittsburgh intended to make large expenditures for the sole benefit of territory within its prior boundaries. The debt arising from the expenditures was in part to be retired by taxes paid by Allegheny citizens, and plaintiff alleged that those taxes would deprive him of property without due process of law. 207 U.S. at 165-166. The Court rejected that contention, and said:

> "[A State legislature] at its pleasure . . . may . . . expand or contract the territorial area [of a municipality], [and] unite the whole or part of it with another . . ., although the inhabitants and property owners may by such changes suffer inconvenience, and their property may be lessened in value by the burden of increased taxation, or for any other reason . . ."

Hunter's statement as to the legislature's power with regard to municipalities was recently cited with approval in *Reynolds v. Sims*, 377 U.S. 533, 575 (1964), and its principle recently reaffirmed in *Gomillion v. Lightfoot*, 364 U.S. 339 (1960):

> "[*Hunter v. Pittsburgh* held that] a citizen of one municipality is not deprived of property without due process of law by being subjected to increased tax

burdens as a result of the consolidation of his city with another. . . .

"[I]f one principle clearly emerges from the numerous decisions of this Court dealing with taxation, it is that the Due Process Clauses affords no immunity against mere inequalities in tax burdens, nor does it afford protection against their increase as an indirect consequence of a state's exercise of its political powers." *Id*, at pp. 342-343.

Appellants attempt to distinguish *Hunter* on the ground that Allegheny taxpayers were to be taxed only for "anticipated, future indebtedness," while Coronado taxpayers may be taxed for San Diego's "pre-existing debts." (Jur. Stmt. pp. 15-16) That is a classic distinction without a difference. In both cases any taking of property from citizens of the smaller city occurs not on the assumption or issuance of debt, but on payment of taxes levied to pay the debt. Whether revenue from those taxes is used to pay past debts or future debts cannot make any difference to the taxpayer; the bite he suffers in each instance is identical. Appellants' assertion that "the *Hunter* plaintiffs . . . were entitled to participate in . . . the authorization of the future improvement programs requiring the issuance of municipal bonds" (Jur. Stmt. 17), for the payment of which they were to be taxed, does not support the distinction either. Coronado will participate, through its representative on the Board of Port Commissioners, in determining whether to pay the debts the District has assumed out of operating revenue or by assessing taxes (see pp. 14-15, *infra*) ; and since with only 2% of the District's population Coronado will elect one of the seven members of the Board of Port Commissioners, its representative will have six times the voice Coronado's population would entitle him to have were it represented on

the Board on the basis of population equality. Ch. 67, §§ 16, 46-49.5, 80, 85.

In any event, this Court has expressly held that a state legislature may impose the pre-existing indebtedness of a town or county upon a different town or county, without even permitting the transferee to vote upon the question. See *Mt. Pleasant v. Beckwith*, 100 U.S. 514 (1879); *Morgan v. Beloit, City and Town*, 74 U.S. 613 (1868). Cf. *Laramie County v. Albany County*, 92 U.S. 307 (1875).* Accordingly, far from being a "first decision" (Jur. Stmt. p. 15) the District Court of Appeals' ruling has been established constitutional law for almost a century.

Moreover, the issue is not even present in this case. As appellants point out, San Diego's debts were transferred to a "special governmental district." (Jur. Stmt., pp. 15, 17). In the *Mt. Pleasant* and *Morgan* cases, the debts of the transferor city were transferred directly to the transferee city, whose taxpayers plainly were saddled with the obligation to pay the debt. But Section 67 of Chapter 67 provides that the District, not Coronado or its taxpayers, will assume the prior bonded indebtedness of the transferor city.

Section 67 does provide that the District may use proceeds raised by taxation of property in the cities included in the District to retire the bonds it assumes from them. But appellants do not allege that the District has levied a tax, much less that its proceeds have been or will be used to retire the bonds. Moreover, Section 67 and, as appellants point out, the bond assumption agreements entered by

*Appellants imply that the pre-existing debts of an *insolvent* city, but not of a solvent one, may constitutionally be transferred to an objecting city. (Jur. Stmt., p. 15). Appellants fail to explain the substance of that distinction, or to note that in *Morgan, supra*, the transferor was solvent. See also *Laramie County v. Albany County, supra.*

the District pursuant to it (Jur. Stmt. 7), provide that revenues from the facilities constructed from the bond proceeds shall be used to retire them, and Sections 80 and 85 provide that moneys accruing from the operation of harbor facilities and from tolls and charges collected by the District may also be used to retire them. Therefore, although it is possible that some day taxes paid by Coronado citizens may be used to pay part of San Diego's "pre-existing debt", it is equally possible that that may never happen. (See Opinion, Appendix A, pp. 31-32; Jur. Stmt., p. 7). When and if it does, appellant taxpayer may not even reside in Coronado. Meanwhile, he has not been deprived of anything, with or without due process of law. *Johnson v. Genesee County, Mich.*, 232 F.Supp. 567, 571 (E.D. Mich. 1964). See *Doremus v. Board of Education*, 342 U.S. 429 (1952); *Coffman v. Breeze Corporations*, 323 U.S. 316 (1945).* As for appellant Coronado, it will *never* be deprived of anything, because its property is exempt from taxation under State law. See Opinion, Appendix A, p. 32.

And there are two sides to a balance sheet; while it transferred debts which it incurred in the development of its tidelands to the District, San Diego also transferred to the District those tidelands, on which substantial improvements, including a harbor and an airport, had been built. The value of the assets San Diego transferred to the District exceeded the amount of the debts it transferred to it by over thirty-two million dollars ($32,000,000). See p. 5,

*The suggestion (Jur. Stmt., p. 16, n. 5) that appellant taxpayer's property has been taken because it has decreased in value by having somehow been encumbered with the District's obligations is unsupported by any fact in this record or any authority cited by appellants or known to us. In fact, State authority is directly opposed. *Drumhiller v. Wright*, 64 Cal. App. 498, 500, 222 Pac. 166 (1923).

supra. Appellants claim that San Diego's debts were "foisted" upon them is fantasy,* and the people of Coronado themselves, who have recently voted overwhelmingly in favor of three District bond issues, apparently share that opinion. See p. 6, *supra.*

CONCLUSION

Appellants' Complaint prays for an injunction restraining the District from operating, and for a declaration that the procedures which established it are unconstitional. See Clerk's Transcript, pp. 15-16. In other words, appellants ask this Court to bring the District, which has been operating about two years, to a dead stop.† They have not mentioned a reason why they need, or are entitled to, that extraordinary relief.

---

*Appellants' insinuation that San Diego's voters voted in favor of the District in order to unload their debt upon Coronado (Jur. Stmt., pp. 15, 17) is not supported by anything in the record, and it is patently absurd in the light of the value of the San Diego assets transferred to the District. Their other gratuitous insinuation, that San Diego's voters knew the District would assume San Diego's debts but didn't know that on establishment the District would be authorized to issue new obligations, in whose payment they would have to share (Jur. Stmt., p. 17), attributes to San Diego voters a startling composite of craftiness and naivete which exists only in appellants' fancy and is not even suggested by any fact in this record. The District clearly has the authority to issue new obligations. (Ch. 67, § 28.)

†Appellants limited their prayer in the brief filed by them in the District Court of Appeal, and asked the Court to remove Coronado "from the contours of the District." Whether they intend to limit their prayer on this Appeal does not appear from their Jurisdictional Statement. In any case, removing Coronado from the District is no solution. That would permit Coronado to share the economic benefits afforded by the District without being subject to the correlative obligations. The legislature enacted Chapter 67 because it determined that the harbor and port facilities of the San Diego Bay Area could be effectively developed only by a specially created district having jurisdiction over all of the facilities in the area, including those in Coronado. Removing Coronado from the District runs against the entire legislative scheme and would destroy the very basis upon which the District was established.

In fact, neither the operation of the District nor the procedures leading to its establishment have deprived either appellant of anything, and the questions of law which appellants present have all been decided against them long ago by this Court. The voters in the affected area overwhelmingly approved the District's establishment. The people of Coronado have recently overwhelmingly endorsed its operation. The District has work to do, and it should be permitted to get on with it, unhindered by the cloud this litigation has hung over it. The Appeal should be dismissed.

The State of California has authorized us to state that it joins in this brief.

Respectfully submitted,

AARON W. REESE
BURNHAM ENERSEN
601 California Street
San Francisco, California 94108

By BURNHAM ENERSEN
Counsel for Appellees
The San Diego Unified
Port District and its
Port Commissioners

Of Counsel
McCUTCHEN, DOYLE, BROWN, TRAUTMAN & ENERSEN
DAVID M. HEILBRON

PROOF OF SERVICE

I, BURNHAM ENERSEN, one of the attorneys for appellees SAN DIEGO UNIFIED PORT DISTRICT, MILES BOWLER, B. F. COGGAN, JAMES GLASGOW, C. A. LARSEN, D. D. MCELFRESH and LARRY RUEHLE, and a member of the Bar of the Supreme Court of the United States, certify that on the 7th day of January, 1965, I served copies of the foregoing Brief of Appellees San Diego Unified Port District and its Port Commissioners in Support of Motion to Dismiss Appeal on the several parties as follows:

1. On appellants CITY OF CORONADO and R. J. TOWNSEND, by depositing a copy in a United States Post Office Box at San Francisco, California, with first-class postage prepaid, to their attorneys of record as follows:

(a) John R. Goodbody, Esq.
City Attorney
Coronado, California

(b) George A. Blackstone
Caspar W. Weinberger
M. Laurence Popofsky
John H. Cutler
Heller, Ehrman, White & McAuliffe
Attorneys at Law
14 Montgomery Street
San Francisco, California

2. On the STATE OF CALIFORNIA, by depositing a copy in a United States Post Office Box at San Francisco, California, with first-class postage prepaid, to its attorneys of record as follows:

Thomas Lynch, Attorney General
Ariel C. Hilton, Deputy Attorney General
600 California State Building
Los Angeles 12, California

BURNHAM ENERSEN

Attorney for Appellees
The San Diego Unified
Port District and its
Port Commissioners

(Appendices Follow)

Appendix A

Excerpt from Board of Supervisors' Minutes of December 18, 1962

No. 111
Re the Formation of the
San Diego Unified Port
District.

On motion of Supervisor Bird, seconded by Supervisor Gibson, the following resolution is adopted:

WHEREAS, there were heretofore filed with this Board resolutions of consent adopted by the councils of the City of National City (Document No. 320796) and The City of San Diego (Document No. 320886), and petitions calling for the formation of the proposed San Diego Unified Port District from the cities of Chula Vista (Document No. 320895), Coronado (Document Nos. 320896 and 320903) and Imperial Beach (Document No. 320897), all as authorized and required by Sections 6 and 7 of the San Diego Unified Port District Act; and

WHEREAS, pursuant thereto this Board on August 7, 1962 adopted its order setting said resolutions and petitions for hearing before it on Thursday, September 6, 1962 at 9:30 a.m. in its chamber (Minutes 8-7-62 item 121); and

WHEREAS, said hearing was held at said time and place and at an adjourned session held on September 6, 1962 at 2:00 p.m., and then closed; and

WHEREAS, on September 13, 1962 at an adjourned regular meeting, this board adopted its resolution calling an election to be held November 6, 1962 on the proposition of the formation of the proposed San Diego Unified Port District and ordered said election consolidated with the State-wide general election to be held on that date (Minutes 9-13-62 item 2; and

WHEREAS, said election was held on said date by the Registrar of Voters of the County of San Diego in accordance with said order and he thereafter canvassed the returns from each precinct and the absentee vote for said election and certified to the Clerk of this Board on December 18, 1962 the result of said canvass (Document No. 326440); and

WHEREAS, on December 18, 1962 the Clerk of this Board entered upon the records of this Board a statement of said result (Document No. 326444); NOW THEREFORE

IT IS RESOLVED, DETERMINED AND DECLARED that at said election of November 6, 1962 the vote cast on the proposition of the formation of the proposed San Diego Unified Port District was as follows:

Measure Submitted to Vote of Voters:

> Shall the proposition to organize the San Diego Unified Port District for the development and improvement of the tidelands and lands lying under the inland navigable waters of San Diego Bay and the promotion of commerce, navigation, fisheries and recreation thereon, pursuant to the San Diego Unified Port District Act, be adopted?

Vote Cast in The City of San Diego:

	Precincts	Absentee	Total
Yes	110,759	4,218	114,977
No	50,924	1,213	52,137

Vote Cast in the Cities of Chula Vista, Coronado, Imperial Beach and National City:

	Precincts		Precincts
Chula Vista		National City	
Yes	8,764	Yes	4,590
No	5,380	No	2,754
Coronado		Absentee	
Yes	1,024	Yes	432
No	3,014	No	365
Imperial Beach		Total	
Yes	1,891	Yes	16,701
No	1,325	No	12,838

IT IS FURTHER FOUND AND DECLARED that at said election of November 6, 1962 a majority of the votes cast in The City of San Diego was in favor of the formation of said proposed San Diego Unified Port District and that a majority of the votes cast in the cities of Chula Vista, Coronado, Imperial Beach and National City, there being no outside territory and the votes from said four cities being combined together, was cast in favor of the formation of said proposed San Diego Unified Port District.

ACCORDINGLY, IT IS RESOLVED, DECLARED AND ORDERED that

1. The San Diego Unified Port District is duly established, formed and existing in the County of San Diego pursuant to the San Diego Unified Port District Act (California Statutes of 1962, First Extraordinary Session, Chapter 67);

2. The name of the district shall be San Diego Unified Port District;

3. The official name or names by which the district is commonly known is "Port of San Diego".

4. The boundaries of the San Diego Unified Port District are described as follows:

All that territory of the County of San Diego included within the boundaries of the City of Chula Vista, the City of Coronado, the City of Imperial Beach, the City of National City and The City of San Diego.

PASSED AND ADOPTED by the Board of Supervisors of the County of San Diego, State of California, this 18th day of December, 1962, by the following vote:

AYES: Supervisors Gibson, Bird, Dent, Austin and Cozens

NOES: Supervisors None

ABSENT: Supervisors None

State of California, } ss.
County of San Diego, }

I, R. B. JAMES, County Clerk of the County of San Diego, State of California, and ex officio Clerk of the Board of Supervisors of said County, hereby certify that I have compared the foregoing copy with the original resolution passed and adopted by said Board, at a regular meeting thereof, at the time and by the vote therein stated, which original resolution is now on file in my office; that the same contains a full, true and correct transcript therefrom and of the whole thereof.

Witness my hand and the Seal of said Board of Supervisors, this 18th day of December, 1962.

R. B. JAMES, County Clerk and ex officio Clerk of the Board of Supervisors

By SARA DREW
Deputy

(Seal)

SUMMARY OF ELECTION RETURNS

FIRST PART City		Precinct Vote	Absentee Vote	Total First Part Vote	Percentage	Total Vote (Yes and No Totalled)	Percentage of Total District Vote
San Diego	Yes	110,759	4,218	114,977	69%	167,114	85%
	No	50,924	1,213	52,137	31%		
				167,114	100%		

SECOND PART City		Precinct Vote	Absentee Vote	Total Second Part Vote	Percentage	Total Vote (Yes and No Totalled)	Percentage of Total District Vote
Chula Vista	Yes	8,764	—	8,764		14,144	7%
	No	5,380		5,380			
National City	Yes	4,590	—	4,590		7,344	4%
	No	2,754		2,754			
Coronado	Yes	1,024	—	1,024		4,038	2%
	No	3,014		3,014			
Imperial Beach	Yes	1,891	—	1,891		3,216	1½%
	No	1,325		1,325			
	Yes		432	432			
	No		365	365		797	½%
						29,539	15%

Total Yes	16,701	57%
Total No	12,838	43%
Total Second Part Vote	29,539	100%
Total Vote Both Parts	196,653	

Appendix B

Appendix C

SAN DIEGO UNIFIED PORT DISTRICT

ANNUAL FINANCIAL REPORT

PORT OF SAN DIEGO UNIFIED PORT DISTRICT

FISCAL YEAR ENDING JUNE 30, 1963

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PORT OF SAN DIEGO
And Lindbergh Field Air Terminal
1365 North Harbor Drive · San Diego 1, California
Phone 233-0181 · Mailing Address: P.O. Box 488, San Diego 12

29 October 1963

On 22 October 1963 at a regular meeting of the Board of Port Commissioners of the San Diego Unified Port District the Board adopted the report dated 13 August 1963 of Peat, Marwick, Mitchell & Co., Certified Public Accountants, as the report of the Board of Port Commissioners of the affairs and financial condition of the District for the fiscal year ended 30 June 1963.

/s/ CHARLES C. HARTMAN
RADM Charles C. Hartman (USN Ret)
Vice Chairman
Board of Port Commissioners
San Diego Unified Port District

/s/ JAMES V. GLASGOW
James V. Glasgow
Secretary
Board of Port Commissioners
San Diego Unified Port District

PEAT, MARWICK, MITCHELL & CO.
Certified Public Accountants
(Incorporating Everts and Esenoff)
1850 Fifth Avenue
San Diego 1, California

ACCOUNTANTS' REPORT

Board of Port Commissioners
San Diego Unified Port District:

We have examined the balance sheet—all funds of the San Diego Unified Port District as of June 30, 1963 and the related statements of operations and statement of transfers from cities and changes in District equity, reserves and fund balances for the period then ended. These statements do not include the assets, liabilities or operating figures pertaining to the City of Coronado tideland properties which, subject to pending litigation, may be includable herein. Our examination was made in accordance with generally accepted auditing standards, and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

The financial statements included in this report were prepared from the accounting records which are maintained on the accrual basis method of accounting and accordingly revenues are recorded when earned and expenses are recorded when incurred.

In our opinion, the accompanying financial statements, present fairly the financial position of the San Diego Unified Port District at June 30, 1963 and the results of its operations and changes in fund balances for the period then ended in conformity with generally accepted accounting principles.

PEAT, MARWICK, MITCHELL & CO.

San Diego, California
August 13, 1963

SAN DIEGO UNIFIED PORT DISTRICT

Statement of Transfers from Cities and Changes in District Equity, Reserves and Fund Balances (Note 1)

December 18, 1962 through June 30, 1963

		Revenue fund			Other funds				
	Total	Available for operations	Investment in land, facilities and equipment	Long-term debt	Public works construction	Capital outlay	Special aviation	Stores revolving	Petty cash and change revolving
Transfers from cities:									
City of San Diego:									
Increases:									
Cash from City harbor funds, net of interest earned subsequent to February 15, 1963 ($20,322.90)	$ 1,205,704.95	654,108.00			542,450.49		5,000.00	4,146.46	
Cash from City deposit trust fund	6,562.15								
Investments	68,000.00	68,000.00							
Stores inventory	69,895.90							69,895.90	
Receivables, other than concession returns	68,715.34	68,715.34							
Concession returns receivable	52,917.08	52,917.08							
Bond interest and redemption fund balance - 1960 harbor improvement	225,634.85								
Prepaid insurance and deferred charges to income	76,211.88	76,211.88							
Operating fund balance, June 30, 1963	77,287.10	77,287.10							
Excess of operating fund encumbrances over actual liabilities incurred at June 30, 1963	51,683.42	51,683.42							
Land, facilities and equipment	47,501,398.91		47,501,398.91						
Operating fund construction in progress	1,019,630.00		1,019,630.00						
Total increases	50,423,641.58	1,048,922.82	48,521,028.91	-	542,450.49	-	5,000.00	74,042.36	-
Decreases:									
Bonded debt assumed (principal)	10,709,500.00			10,709,500.00					
Bond interest accrued at transfer date	137,285.06								
Accumulated depreciation, facilities and equipment	6,496,412.71		6,496,412.71						
Book value of equipment costing less than $50.00 not capitalized	4,654.37		4,654.37						
Provision for uncollectible receivables	9,213.74	9,213.74							
Revenues paid in advance	46,540.31	46,540.31							
Receivable adjustment	29.66	29.66							
Accrued vacation pay	93,806.74	93,806.74							
Accrued overtime pay	6,500.37	6,500.37							
Total decrease	17,503,942.96	156,090.82	6,501,067.08	10,709,500.00	-	-	-	-	-
Total, City of San Diego	32,919,698.62	892,832.00	42,019,961.83	(10,709,500.00)	542,450.49	-	5,000.00	74,042.36	-
City of Chula Vista:									
Increases:									
Cash	373,262.84	18,559.74							
Land	2,040,770.00		2,040,770.00						
Total increases	2,414,032.84	18,559.74	2,040,770.00	-	-	-	-	-	-
Decreases:									
Bonded debt assumed (principal)	1,130,000.00			1,130,000.00					
Bond interest accrued at transfer date	20,865.56								
Revenues paid in advance	110,556.72	110,556.72							
	1,261,422.28	110,556.72	-	1,130,000.00	-	-	-	-	-
Total, City of Chula Vista	1,152,610.56	(91,996.98)	2,040,770.00	(1,130,000.00)	-	-	-	-	-
Carried forward	$ 34,072,309.18	800,835.02	44,060,731.83	(11,839,500.00)	542,450.49	-	5,000.00	74,042.36	-

SAN DIEGO UNIFIED PORT DISTRICT

Exhibit D

ansfers from Cities and Changes in District Equity,
Reserves and Fund Balances (Note 1)

cember 18, 1962 through June 30, 1963

	Total	Revenue fund			Other funds								
		Available for operations	Investment in land, facilities and equipment	Long-term debt	Public works construction	Capital outlay	pecial viation	Stores revolving	Petty cash and change revolving	Chula Vista harbor improvement bond construction	Interest and redemption funds	Deposit trust	Payroll deduction trust
	$ 1,205,704.95	654,108.00			542,450.49		5,000.00	4,146.46					
	6,562.15											6,562.15	
	68,000.00	68,000.00											
	69,895.90							69,895.90					
	68,715.34	68,715.34											
	52,917.08	52,917.08											
nt	225,634.85										225,634.85		
	76,211.88	76,211.88											
	77,287.10	77,287.10											
	51,683.42	51,683.42											
	47,501,398.91		47,501,398.91										
	1,019,630.00		1,019,630.00										
	50,423,641.58	1,048,922.82	48,521,028.91	-	542,450.49	-	5,000.00	74,042.36	-	-	225,634.85	6,562.15	-
	10,709,500.00			10,709,500.00									
	137,285.06										137,285.06		
	6,496,412.71		6,496,412.71										
	4,654.37		4,654.37										
	9,213.74	9,213.74											
	46,540.31	46,540.31											
	29.66	29.66											
	93,806.74	93,806.74											
	6,500.37	6,500.37											
	17,503,942.96	156,090.82	6,501,067.08	10,709,500.00	-	-	-	-	-	-	137,285.06	-	-
	32,919,698.62	892,832.00	42,019,961.83	(10,709,500.00)	542,450.49	-	5,000.00	74,042.36	-	-	88,349.79	6,562.15	-
	373,262.84	18,559.74								354,703.10			
	2,040,770.00		2,040,770.00										
	2,414,032.84	18,559.74	2,040,770.00	-	-	-	-	-	-	354,703.10	-	-	-
	1,130,000.00			1,130,000.00									
	20,865.56										20,865.56		
	110,556.72	110,556.72											
	1,261,422.28	110,556.72	-	1,130,000.00	-	-	-	-	-	-	20,865.56	-	-
	1,152,610.56	(91,996.98)	2,040,770.00	(1,130,000.00)	-	-	-	-	-	354,703.10	(20,865.56)	-	-
	$ 34,072,309.18	800,835.02	44,060,731.83	(11,839,500.00)	542,450.49	-	5,000.00	74 042.36	-	354,703.10	67,484.23	6,562.15	-

SAN DIEGO UNIFIED PORT DISTRICT

Statement of Transfers from Cities and Changes in District Equity,
Reserves and Fund Balances (Note I), Continued

	Total	Revenue fund					
		Available for operations	Investment in land, facilities and equipment	Long-term debt	Public works construction	Capital outlay	Special aviatio
Brought forward	$ 34,072,309.18	800,835.02	44,060,731.83	(11,839,500.00)	542,450.49	-	5,000.0
City of National City:							
Increases:							
Cash, net of rental income earned subsequent to March 1, 1963 ($262.13)	$ 31,270.05	31,270.05					
Receivables	25,774.39	25,774.39					
Deposit, California Water and Telephone Company	15,170.42	15,170.42					
Due from City for receivable collections	12,236.70	12,236.70					
Land and facilities	1,197,374.99		1,197,374.99				
Total increases	1,281,826.55	84,451.56	1,197,374.99	-	-	-	-
Decreases:							
Accumulated depreciation	991.75		991.75				
Total decreases	991.75	-	991.75	-	-	-	-
Total, City of National City	1,280,834.80	84,451.56	1,196,383.24	-	-	-	-
Total - all cities	35,353,143.98	885,286.58	45,257,115.07	(11,839,500.00)	542,450.49	-	5,000.0
District transactions:							
Increases:							
Net revenue, excluding depreciation expense (Exhibit C)	487,413.75	487,413.75					
Interest income, other than revenue fund	19,786.12				11,244.58		
Federal grants in aid	205,500.00				205,500.00		
Amount required for accrued interest	202,187.66						
Trust fund deposits, net of withdrawals	11,862.57						
Fund transfers	-	(486,607.03)	186,877.22		268,729.81	35,000.00	(5,000.0
Total increases	926,750.10	806.72	186,877.22	-	485,374.39	35,000.00	(5,000.0
Decreases:							
Interest expense	130,703.76						
Depreciation, period ended June 30, 1963	238,476.42		238,476.42				
Depreciation on grants in aid, period ended June 30, 1963	4,656.11		4,656.11				
Total decreases	373,836.29	-	243,132.53	-	-	-	-
Total, District	552,913.81	806.72	(56,255.31)	-	485,374.39	35,000.00	(5,000.0
Equity, reserves and fund balances, June 30, 1963	$ 35,906,057.79	886,093.30	45,200,859.76	(11,839,500.00)	1,027,824.88	35,000.00	-
Analysis of equity, reserves and fund balances:							
Equity in land, facilities and equipment	33,361,359.76		45,200,859.76	(11,839,500.00)			
Reserve for debt redemption	141,482.94						
Reserve for authorized expenditures	1,388,654.71				1,027,824.88		
Capital outlay fund balance	35,000.00					35,000.00	
Trust fund balances	18,424.72						
Revolving fund balances	75,042.36						
Reserve for encumbrances	102,333.43	102,333.43					
Available for operations	783,759.87	783,759.87					
	$ 35,906,057.79	886,093.30	45,200,859.76	(11,839,500.00)	1,027,824.88	35,000.00	-

See accompanying notes to financial statements.

SAN DIEGO UNIFIED PORT DISTRICT

ment of Transfers from Cities and Changes in District Equity, Reserves and Fund Balances (Note 1), Continued

	Total	Revenue fund			Other funds								
		Available for operations	Investment in land, facilities and equipment	Long-term debt	Public works construction	Capital outlay	Special aviation	Stores revolving	Petty cash and change revolving	Chula Vista harbor improvement bond construction	Interest and redemption funds	Deposit trust	Payroll deduction trust
	$ 34,072,309.18	800,835.02	44,060,731.83	(11,839,500.00)	542,450.49	-	5,000.00	74,042.36	-	354,703.10	67,484.23	6,562.15	-
1963 ($262.13)	$ 31,270.05	31,270.05											
	25,774.39	25,774.39											
	15,170.42	15,170.42											
	12,236.70	12,236.70											
	1,197,374.99		1,197,374.99										
	1,281,826.55	84,451.56	1,197,374.99	-	-	-	-	-	-	-	-	-	-
	991.75		991.75										
	991.75	-	991.75	-	-	-	-	-	-	-	-	-	-
	1,280,834.80	84,451.56	1,196,383.24	-	-	-	-	-	-	-	-	-	-
	35,353,143.98	885,286.58	45,257,115.07	(11,839,500.00)	542,450.49	-	5,000.00	74,042.36	-	354,703.10	67,484.23	6,562.15	-
	487,413.75	487,413.75											
	19,786.12				11,144.58					6,126.73	2,514.81		
	205,500.00				205,500.00								
	202,187.66										202,187.66		
	11,862.57												
	-	(486,607.03)	186,877.22		268,729.81	35,000.00	(5,000.00)		1,000.00			2,300.85	9,561.72
	926,750.10	806.72	186,877.22	-	485,374.39	35,000.00	(5,000.00)	-	1,000.00	6,126.73	204,702.47	2,300.85	9,561.72
	130,703.76										130,703.76		
	238,476.42		238,476.42										
	4,656.11		4,656.11										
	373,836.9	-	243,132.53	-	-	-	-	-	-	-	130,703.76	-	-
	552,913.81	806.72	(56,255.31)	-	485,374.39	35,000.00	(5,000.00)	-	1,000.00	6,126.73	73,998.71	2,300.85	9,561.72
1963	$ 35,906,057.79	886,093.30	45,200,859.76	(11,839,500.00)	1,027,824.88	35,000.00	-	74,042.36	1,000.00	360,829.83	141,482.94	8,863.00	9,561.72
	33,361,359.76		45,200,859.76	(11,839,500.00)									
	141,482.94										141,482.94		
	1,388,654.71				1,027,824.88					360,829.83			
	35,000.00					35,000.00							
	18,424.72												
	75,042.36											8,863.00	9,561.72
	102,333.43	102,333.43						74,042.36	1,000.00				
	783,759.87	783,759.87											
	$ 35,906,057.79	886,093.30	45,200,859.76	(11,839,500.00)	1,027,824.88	35,000.00	-	74,042.36	1,000.00	360,829.83	141,482.94	8,863.00	9,561.72

Appendix D

No. 50

Re Declaration of the Result of the San Diego Unified Port District Bond Election Consolidated with the Statewide General Election of November 3, 1964.

On motion of Supervisor Gibson, seconded by Supervisor Cozens, the following resolution is adopted:

WHEREAS, by Resolution No. 64-178 of its board of port commissioners the San Diego Unified Port District requested that this Board consolidate a proposed bond election with the statewide general election of November 3, 1964, said resolution having been filed with this Board on August 19, 1964 (Document No. 350015); and

WHEREAS, by resolution adopted August 25, 1964 (minutes 8-25-64, item 45) this Board ordered the consolidation of said bond election with the statewide general election of November 3, 1964; and

WHEREAS, said consolidated election was called, held and conducted in the manner required by law and on November 20, 1964 the Registrar of Voters of the County of San Diego certified to the Clerk of this Board the result of the canvass of said consolidated election (Document No. 353452); and

WHEREAS, the Clerk of this Board has entered upon the records of this Board a statement of said result (Document No. 353469);

NOW THEREFORE

IT IS RESOLVED AND DECLARED that the result of said port district bond election is as follows:

PROPOSITION G.

		Vote		
		Precincts	Absentee	Total
Shall the San Diego Unified Port District incur a bonded indebtedness in the principal sum of $5,410,000 for the purpose of the acquisition and construction of improvements, works, property and facilities at Lindbergh Field International Airport, including the relocation and construction of flight electronic aids, the construction of aircraft parking and service aprons, taxi-ways, aircraft run-up pad, roadways and highway overpass, and the acquisition and construction of a new terminal building and auxiliary buildings with necessary equipment, furniture and furnishings, the reconstruction of the existing terminal building, the acquisition of a building and its modification to a structure for air cargo, and for the foregoing appurtenances and appurtenant work, and the acquisition, construction and installation of automobile parking lots, sidewalks and curbs, utilities, lighting, drainage structures, fencing, landscaping, grading and paving, and other property necessary therefor and the expenses of all proceedings for the authorization, issuance and sale of the bonds?	YES	185,778	10,428	196,206
	NO	50,673	3,252	53,925

PROPOSITION H.

		Vote		
		Precincts	Absentee	Total
Shall the San Diego Unified Port District incur a bonded indebtedness in the principal sum of $1,530,000 for the purpose of the acquisition and construction of improvements, works, property and facilities to improve the area called Harbor Island and the isthmus leading thereto by the construction and installation of utilities, drainage structures, roadways, curbs and sidewalks, automobile parking lots, public rest rooms, public areas, lighting, landscaping, dredging, grading, capping, filling and bank protection, and including the expenses of all proceedings for the authorization, issuance and sale of the bonds?	YES	185,690	9,491	195,181
	NO	49,611	3,953	53,564

PROPOSITION J.

		Precincts	Vote Absentee	Total
Shall the San Diego Unified Port District incur a bonded indebtedness in the principal sum of $3,930,000 for the purpose of the acquisition and construction of the first increment of the 24th Street Marine Terminal, including dredging and filling, riprapp bank construction, the surfacing and paving of open storage areas, the construction of an apron wharf and bulkheads, the construction and installation of storm drains and utilities, access roadways, railroad tracks, pipelines, floodlighting, and all appurtenances, structures and work necessary or convenient for said Terminal, and including the expenses of all proceedings for the authorization, issuance and sale of the bonds?	YES	191,412	9,882	201,294
	NO	43,529	3,464	46,993

IT IS FURTHER ORDERED that the Clerk of this Board certify said result to the San Diego Unified Port District.

PASSED AND ADOPTED by the Board of Supervisors of the County of San Diego, State of California, this 8th day of December, 1964, by the following vote:

AYES: Supervisors Gibson, Bird, Dent, Austin, and Cozens
NOES: Supervisors None
ABSENT: Supervisors None

STATE OF CALIFORNIA }
County of San Diego } ss

I, HELEN KLECKNER, Clerk of the Board of Supervisors of the County of San Diego, State of California, hereby certify that I have compared the foregoing copy with the original resolution passed and adopted by said Board, at a regular meeting thereof, at the time and by the vote therein stated, which original resolution is now on file in my office; that the same contains a full, true and correct transcript therefrom and of the whole thereof.

Witness my hand and the seal of said Board of Supervisors, this 8th day of December, 1964.

HELEN KLECKNER
Clerk of the Board of Supervisors
/s/ FLORINDA CLARK

By Florinda Clark
Deputy

(SEAL)

Certificate of Charles J. Sexton, Registrar of Voters, County of San Diego

---

STATE OF CALIFORNIA }
COUNTY OF SAN DIEGO } ss.

I, CHARLES J. SEXTON, REGISTRAR OF VOTERS in and for the County of San Diego, State of California, Do HEREBY CERTIFY that at the General Election held November 3, 1964, the precinct vote within the City of Coronado on the San Diego Unified Port District bond propositions was as follows:

PROPOSITION G
Yes—3005
No —1278

PROPOSITION H
Yes—2781
No —1455

PROPOSITION J
Yes—2633
No —1364

DATED: January 5, 1965.

/s/ CHARLES J. SEXTON
CHARLES J. SEXTON
REGISTRAR OF VOTERS
In and for the County of
San Diego, State of California

Office-Supreme Court, U.S.
FILED
JAN 27 1965
JOHN F. DAVIS, CLERK

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1964

No. 763

CITY OF CORONADO and R. J. TOWNSEND, a taxpayer,

Appellants,

vs.

THE SAN DIEGO UNIFIED PORT DISTRICT, MILES BOWLER, B. F. COGGAN, JAMES GLASGOW, C. A. LARSEN, D. D. MCELFRESH, LARRY RUEHLE and DOE I, as port commissioners acting as the Board of Commissioners of the San Diego Unified Port District; THE STATE OF CALIFORNIA, Defendant pursuant to Section 6308 of the Public Resources Code of the State of California; et al.,

Appellees.

On Appeal from the District Court of Appeal of the State of California, Fourth Appellate District

BRIEF IN OPPOSITION TO MOTION OF APPELLEES TO DISMISS APPEAL

JOHN R. GOODBODY,
City Attorney of the City of Coronado,
Coronado, California,
GEORGE A. BLACKSTONE,
CASPAR W. WEINBERGER,
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JOHN H. CUTLER,
HELLER, EHRMAN, WHITE & MCAULIFFE,
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Attorneys for Appellants.

PERNAU-WALSH PRINTING CO., SAN FRANCISCO

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San Diego Unified Port District Act (California Stats. 1962, First Ex. Sess., Ch. 67, as amended, California Stats. 1963, Reg. Sess., Ch. 673) 2, 5, 6, 7, 8, 9, 10, 11, 13, 14

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1964

No. 763

CITY OF CORONADO and R. J. TOWNSEND, a taxpayer,

Appellants,

vs.

THE SAN DIEGO UNIFIED PORT DISTRICT, MILES BOWLER, B. F. COGGAN, JAMES GLASGOW, C. A. LARSEN, D. D. MCELFRESH, LARRY RUEHLE and DOE I, as port commissioners acting as the Board of Commissioners of the San Diego Unified Port District; THE STATE OF CALIFORNIA, Defendant pursuant to Section 6308 of the Public Resources Code of the State of California; et al.,

Appellees.

On Appeal from the District Court of Appeal of the State of California, Fourth Appellate District

BRIEF IN OPPOSITION TO MOTION OF APPELLEES TO DISMISS APPEAL

Appellants City of Coronado and R. J. Townsend submit this Brief in opposition to the motions of appellees the San Diego Unified Port District and its

port commissioners and the State of California to dismiss this appeal on the ground that it does not present substantial federal questions. This Brief supplements appellants' Jurisdictional Statement filed in this Court on December 16, 1964, in which many of the arguments advanced by appellees in support of their motions were anticipated and disposed of.

DECISION BELOW

The decision of the District Court of Appeal, State of California, Fourth Appellate District, is appended to appellants' Jurisdictional Statement as Exhibit "A" and is reported at 227 A.C.A. 493, 38 Cal. Rptr. 834 (1964).

JURISDICTION

The jurisdictional requirements are adequately set forth in appellants' Jurisdictional Statement, pp. 2-4. The pertinent facts are not controverted by appellees.

STATUTES INVOLVED

Appellants challenge the constitutionality of certain provisions of the San Diego Unified Port District Act (California Stat. 1962, First Ex. Sess., Ch. 67, as amended, California Stat. 1963, Reg. Sess., Ch. 673) which is set forth in Appendix "B" to appellants'

Jurisdictional Statement.[1] Appellants contend that this statute infringes rights secured under the equal protection and due process clauses of the fourteenth amendment.

QUESTIONS PRESENTED

Under the guise of restating the questions presented by this appeal with particular reference "to the facts presented", appellees so arrange the facts as to obscure the significant issues actually involved in these proceedings. (Appellees' Brief, pp. 2-3.) For the convenience of this Court, appellants repeat the questions presented as set forth in their Jurisdictional Statement:

> (a) When a California statute authorizes establishment of a unified harbor district pursuant to electoral procedures under which voters residing in one of the communities in the area designated for inclusion in the district are classified as citizens of their own municipality and empowered through such classification to keep their city independent of the district, does the equal protection clause of the fourteenth amendment require voters residing in another community in the area designated for inclusion to be similarly classified as citizens of their own municipality and equally endowed with the right to prevent the involuntary inclusion of their city in the district?
>
> (b) When a California statute authorizes establishment of a unified harbor district pursuant

---

[1] The San Diego Unified Port District Act is often referred to in this Brief as "Chapter 67" in accordance with the practice adopted by the District Court of Appeal.

to the above-described electoral procedures and requires the district to assume the existing debt obligations of one of the municipalities while obligating all of the taxpayers in the district to guarantee the assumed indebtedness, are taxpayers of another municipality deprived of their property without due process of law as a result of the involuntary inclusion of their city in the district?

STATEMENT OF THE CASE

Appellants' Jurisdictional Statement describes those facts which appellants believe entitle them to relief under the equal protection and due process clauses of the fourteenth amendment. (Juris. Stat. pp. 5-9.)

ARGUMENT

This appeal presents substantial federal questions—questions arising from appellants' forced inclusion in the San Diego Unified Port District and their involuntary assumption of San Diego's antecedent debt obligations. Appellants submit that these events, perpetrated under a statute of the State of California, violated rights secured to them under both the equal protection and due process clauses of the fourteenth amendment.[2]

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[2]It is perfectly apparent that appellant City of Coronado maintains this appeal only in its capacity as *parens patria* in order to vindicate federally protected rights and interests of its citizens, taxpayers and property owners. See *Georgia v. Pennsylvania R.R. Co.*, 324 U.S. 439, 89 L. Ed. 1051 (1945); contrast *Massachusetts*

Appellees, hastening to point out that the ballots cast in Coronado "comprised about 2% of the total district vote" (Appellees' Brief, p. 4), exhort this Court to ignore the injustice inherent in the unified district scheme and urge that appellants' contentions be summarily dismissed as those of an insignificant minority whose constitutional rights are of little consequence. Thus appellees declare: "[t]he District has work to do, and it should be permitted to get on with it, unhindered by the cloud this litigation has hung over it." (Appellees' Brief, p. 17.)

This Court should, of course, reject appellees' suggestion that the constitutional rights and interests of appellants can be effaced simply because they are a minority and should authorize the issuance of appropriate declarations establishing appellants' right to remain independent of the district.

A. EQUAL PROTECTION CONTENTION

As demonstrated in appellants' Jurisdictional Statement, pp. 10-14, the electoral formula incorporated in Chapter 67 enabled voters in San Diego to cast their ballots as representatives of their unique interests as San Diego residents. If a majority of the voters in San Diego opposed establishment, the district could

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v. Mellon, 262 U.S. 447, 67 L. Ed. 1078 (1923). Needless to say, prosecution of this appeal demonstrates that the people of Coronado, acting through their duly constituted municipal authorities, remain adamant in their desire to extricate their municipality from the district and secure redress for the injustice caused by their forced inclusion in the district.

not have been formed even though a majority of the entire bay area electorate favored establishment. On the other hand, Coronado's electors were compelled to vote as members of a heterogeneous, artificial electorate bearing no relationship to their interests and obligations as citizens of Coronado. Notwithstanding the overwhelming opposition of Coronado's voters, the district could be, and was formed.

The discrimination resulting from the legislature's selection of municipal citizenship as the basis for differentiating between electors is clear: voters in Coronado were denied the right to remain independent of the unified port scheme whereas that precise privilege was extended to franchise holders in San Diego through their singular power to veto the district.[3]

Appellees do not deny that voters in Coronado were arbitrarily cast into a specially contrived electorate. Rather, misusing the mathematics of "weight" familiarized by this Court's reapportionment cases, appellees contend that Chapter 67's bifurcated electoral scheme actually favored voters in Coronado.

But appellees do not and cannot explain how this advantage in "weight" could possibly redound to ap-

[3]Appellees obfuscate the issue by insisting that "Coronado is asking for the right to *veto* the district's formation, not the right to say independent of it." (Appellees' Brief, p. 8 fn.) In this respect, appellees are less than candid. Appellants seek only declarations removing the City of Coronado from the district without disrupting the latter's continued operation as a port authority. Such relief fully accords with the policy embodied in Section 88 of Chapter 67 enacted by the 1963 legislature of the State of California after commencement of these proceedings. (Stat. 1963, Ref. Sess., Ch. 673.) See *Conclusion, post.*

pellants' benefit. Under Chapter 67's voting formula, only San Diego's voters were classified as municipal electors and thereby empowered to keep their city outside the district. That legislative classification was not extended to residents of smaller cities such as Coronado. To the contrary, Coronado's electors were compelled to cast their ballots as part of a composite electorate embracing no less than four cities. Whatever the relative "weight" of the ballots when analyzed in isolation from the facts at bar, electors in San Diego could never be compelled to be unwilling parties to the unified harbor scheme; Coronado's electors could—and were. Thus, in the only terms that matter, Chapter 67's electoral scheme favored San Diego electors at the expense of Coronado electors solely because they reside in different communities.

Presenting a caricature of appellants' equal protection contention, appellees view that claim as "based upon the premise that the equal protection clause of the fourteenth amendment requires the vote of one city to count equally to the vote of another city, without reference to the number of voters residing in either". (Appellees' Brief, p. 8.) This contrived "premise" exists only in appellees' imagination[4]; it is no part of appellants' case.[4] Appellants did not draft Chapter 67. That task was performed by the legislature of the State of California. It was those law-

[4]Appellants do not advance a definite standard of equal protection supposedly applicable to all electoral controversies, as appellees imply. Nor need such a standard be espoused by this Court in order to accord appellants relief. What a state *might* do through *different* procedures is irrelevant. What California attempted to do through Chapter 67 is all that is before this Court.

makers who singled out voters in San Diego for separate and favored treatment solely because of their residence in that municipality. The vote of electors by city was made the relevant classification by the legislature, not by appellants; and this classification violates the mandate of *Reynolds v. Sims*, 377 U.S. 533, 12 L. Ed. 2d 506, 526, (1964): "voters cannot be classified, constitutionally, on the basis of where they live."

Having selected municipal citizenship and homesite as the relevant criteria in defining the voting attributes of San Diego's electors, equal protection required the legislature to use the same criteria in defining the voting attributes of Coronado's electors. This is especially true since Chapter 67's voting scheme offered San Diego's electors the opportunity to foist their municipal debts upon the citizens of Coronado while depriving Coronado's voters of any opportunity to avoid that injustice.

The recent decision of this Court in *Dorsey v. Fortson*, ..., U.S. ....., ... S. Ct. ....., ... L. Ed. 2d ..... (1965), *reversing* 228 F. Supp. 259 (N.D.Ga. 1964) cannot salvage California's voter classification scheme from invalidation under the equal protection clause. In *Dorsey*, this Court acknowledged that, quite aside from numbers of voters or claimed disparity in weight, a state legislature cannot favor certain groups of voters over others solely because they reside in different areas. (Compare Appellees' Brief, p. 11). Under the Georgia scheme however, it was impossible to tell from the record, whether a

preferred class of voters had been in fact created by virtue of the classification there in issue. Accordingly, this Court declined to invalidate the Georgia scheme while indicating that subsequent proof that it operated in a discriminatory manner would justify reconsideration.

Here the discriminatory operation of Chapter 67 is manifest. Use of municipal citizenship as the criteria of classification has demonstratively impaired appellants' exercise of their constitutional rights. The electoral scheme of Chapter 67 has run its full course; its discriminatory operation cannot be gainsaid.[5]

B. DUE PROCESS CONTENTION

Chapter 67 empowered San Diego's electors to ease their own municipal burdens by shifting a portion of the outstanding debt obligations of the City of San Diego to property owners residing in the City of Coronado. This was accomplished through the following mechanisms: 1) by requiring the district to assume San Diego's existing debt; and 2) by obligating all taxpayers within the district to guarantee the assumed obligations by subjecting their property to taxation if revenues proved inadequate to service or retire the assumed debentures.

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[5]Appellants submit that the remarkable opinion in *Johnson v. Genessee County, Mich*, 232 F. Supp. 563 (E.D. Mich. 1964) (cited though not relied upon by appellees in Brief p. 10 fn.) is manifestly in error so far as it purports to hold that the federal writ under the United States Constitution does not protect voters casting their ballots in state elections conducted at less than statewide level.

Under Chapter 67's voting formula, Coronado's electors were unable to keep their city independent of the district. As a result, Coronado's property owners now stand surety for the district's assumed debts originally contracted by the voters of San Diego.

Appellees, like the District Court of Appeal, suggest that *Hunter v. Pittsburgh*, 207 U.S. 161, 52 L. Ed. 151, 28 S.Ct. 40 (1907), cures the unfairness of this scheme much in the manner of an old-fashioned tonic palliative. Appellants submit that *Hunter* is not a constitutional "blank check" enabling California to deal with its citizens and their property in this arbitrary and unjust manner.

As explained in appellants' Jurisdictional Statement, pp. 15-18, *Hunter* concerned only anticipated, future indebtedness, not pre-existing debentures. See 207 U.S. at 163. Indeed, the anticipatory character of the *Hunter* debt has been carefully noted by this Court in its description of the *Hunter* holding. See *Gomillion v. Lightfoot*, 364 U.S. 339, 342-44, 5 L. Ed. 2d 110, 81 S. Ct. 125 (1960). Far from being a "classic distinction without a difference," as appellees discursively suggest (Appellees' Brief, p. 13), the distinction between the forced assumption of anticipated future debts and pre-existing obligations is fundamental.

With only future indebtedness at stake, electors casting ballots favoring municipal consolidation or formation of a special district would do so knowing their votes would constitute authorization for the imposition of new municipal or district obligations—obligations which each elector would have to bear to

the same extent as all other property owners. No such equality attends a balloting where pre-existing indebtedness is involved. Antecedent debts necessarily represent outstanding obligations of some, if not a majority, of the electors; inherent in this situation is the danger that electors burdened with pre-existing debt obligations may be able to foist them upon an objecting minority.*

The case at bar demonstrates the basic unfairness of electoral schemes involving the transfer of antecedent debts. San Diego voters, comprising 84% of the bay area electorate, went to the polls with the opportunity to compel Coronado's citizens to share the burdens of San Diego's existing debt obligations. Coronado's electors were offered no means of escaping that injustice. Surely, *Hunter* cannot immunize this scheme from invalidation under the due process clause.

Appellees' other contentions are as misguided as their reliance on *Hunter*.

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*The 19th Century decisions cited by appellees as condoning the arbitrary transfer of pre-existing indebtedness (Appellees' Brief, p. 14) are inapposite or in fact support appellants' contention. *Mt. Pleasant v. Beckwith*, 100 U.S. 514, 25 L. Ed. 699 (1879) and *Morgan v. Beloit*, 74 U.S. (7 Wall.) 613 (1868), concern the rights of holders of public corporation bonds; moreover, the judicially-approved statute in *Morgan*—unlike Chapter 67 but like *Hunter*—required an equitable apportionment of debt obligations among the areas which had originally contracted them. (74 U.S. at 617.) *Laramie County v. Albany County*, 92 U.S. 307 (1875), involved a legislative boundary scheme which operated to the detriment of the complaining owners who had themselves authorized incurrence of the original indebtedness, in contrast to the residents of Coronado. Appellants would, of course, welcome the opportunity to brief these decisions fully in the event that this Court grants them a hearing.

Preoccupied with appellants' failure to allege that Coronado's citizens have already incurred higher tax bills to amortize or service San Diego's pre-existing debts, appellees conclude that appellants have not been deprived of anything. (Appellees' Brief, pp. 14-15.) However, it is clear from the face of the complaint that appellants were deprived of their property at the inception of the district since they were then forced to become sureties or guarantors for San Diego's debts. Moreover, *Hunter* itself forecloses appellees' theory that the due process issue is not "ripe" for adjudication.

In truth, appellees would have this Court undertake the role of an accountant in determining the "ripeness" of the controversy and whether appellants have been deprived of their property. Thus, this Court is urged to consider the value of assets transferred by San Diego to the district in conjunction with that city's transfer of its antecedent debts. However, if these facts are deemed relevant, this cause should be remanded for further proceedings, at which time appellants will be afforded an opportunity—never before granted to them in this litigation—to prove that the district's operating revenues are insufficient, not only to repay the principal of the assumed indebtedness, but also to meet interest and other carrying charges and that, as a result, tax assessments on property situate in the City of Coronado have already increased.

Since this appeal is from a judgment entered after general demurrers had been sustained, appellants should be accorded an opportunity to demonstrate the

full sweep of their injury, including a chance to show that the entire transfer process is harmful to them. Appellants want no part of San Diego's assets; still ess do they want the evanescent interest in those assets accorded them by Chapter 67. And under no circumstances do they desire to shoulder the burdens of San Diego's debts.

The approval of district bond propositions by Coronado voters in the 1964 general election underscores the inherent unfairness of Chapter 67's bond assumption provisions.[7]

Those propositions are comparable to the balloting involved in *Hunter* since all electors in the district voted with the knowledge that affirmative ballots constituted authorization for the incurrence of new obligations which would be equitably shouldered by all residents of the district. As seen, when the establishment of the district was voted upon, San Diego electors voted with the knowledge that formation of the district would enable them to foist their obligations upon voters residing in Coronado and in the other bay area cities.

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[7]Although appellees eagerly bring the facts concerning the 1964 bond propositions before this Court, it may be observed that such facts are scarcely within the ambit of judicial notice. Apparently, appellees do not claim otherwise. See Appellees' Brief, p. 5, fn. Moreover, the "Certificate of Charles J. Sexton, Registrar of Voters, County of San Diego" dated January 5, 1964, appears to be a document executed for the sole purpose of influencing this Court, rather than an instrument prepared by that official in the course of his statutory duties. In any event, it is difficult to perceive how matters occurring two years after the facts giving rise to appellants' cause of action can materially affect adjudication of their rights.

By endorsing the 1964 bond propositions, Coronado's electors were simply exercising their judgment on the merits of the new bond issue in accordance with then existing circumstances. By such action, however, appellants did not, and do not, waive their objections to the procedures under which they have been forced to bear the burdens of San Diego's pre-existing bonded indebtedness.

CONCLUSION

Because of the fundamental unfairness of the procedures under which the district was formed, appellants seek declarations freeing the City of Coronado from the district's contours.

The declarations sought are fully consonant with the policy embodied in Section 88 of Chapter 67, adopted by the California legislature in 1963, long after the commencement of these proceedings. (Stat. 1963, Reg. Sess., Ch. 673.) That section is clearly designed to enable the City of Coronado to be excluded from the district without disrupting the continued operation of the port authority. It further attests to the legislature's conclusion that fulfillment of the goals outlined in Section 2 of Chapter 67 may be achieved without the forced inclusion of appellants therein. Contrast Appellees' Brief, pp. 3-4.

The people of the City of Coronado have opposed the formation of the district since the time when the scheme was first proposed in the state legislature. The injustice inherent in statutory provisions authorizing

the district's establishment and the transfer to it of antecedent debts of constituent municipalities requires careful review by this Court.

Dated, January 26, 1965.

Respectfully submitted,

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